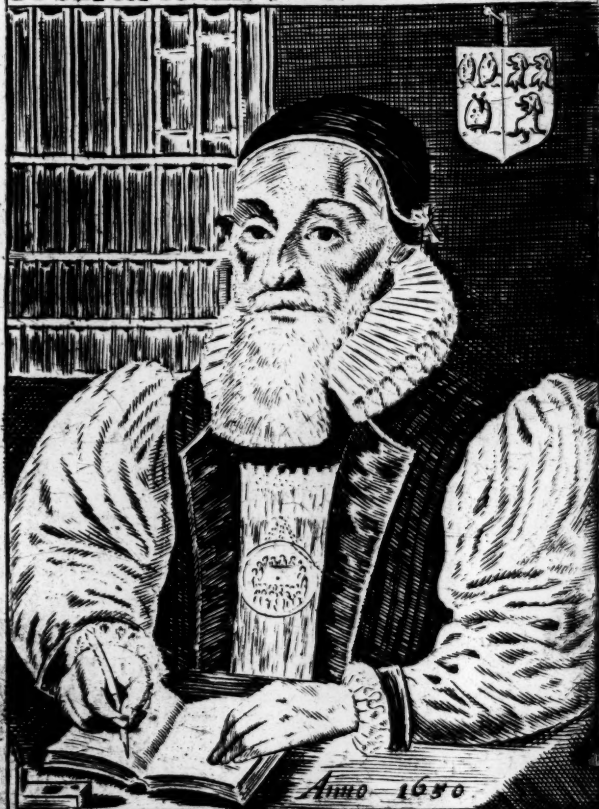
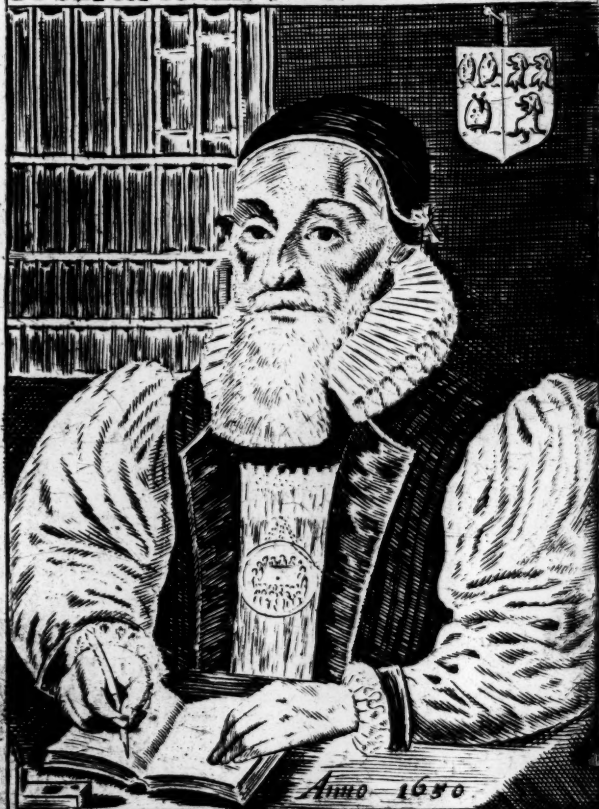


VERA EFFIGIES REVERENDI DOMINI
IOSEPHI HALL NORWICIEPISCOPI



This Picture represents the Forme, where dwells
A Mind, which nothing but that Mind excells.
There's Wisdome, Learning, Witt; there Grace & Love
Rule over all the rest: enough to prove,
Against the froward Conscience of this Time,
The Reverend Name of BISHOP is no Crime.

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Benjamin B. Mox.

° CASES
OF
CONSCIENCE
Practically Resolved:

CONTAINING
A Decision of the princi-
pall Cases of CONSCIENCE,
of daily Concernment, and con-
tinual Use amongst Men.

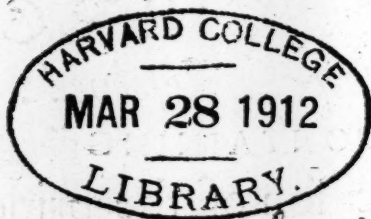
*Very necessary for their Information
and Direction in these evil Times.*

The third Edition much enlarged.

By J O S: H A L L, B. Norwich.

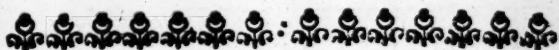
L O N D O N,
Printed by R. H. and J. G. and are to be
sold by Fr: Eglesfield at the Marigold
in S. Paul's Church-yard. 1654.

14454.22.6*




Lucy Osgood fund

H. A. Stewart.



To the R E A D E R.

 F all *Divinity* that part is most usefull, which determines cases of Conscience; and of all cases of Conscience the Practicall are most necessary; as action is of more concernment than speculation: and of all Practicall Cases those which are of most cōmon use are of so much greater necessity &

A 3 be-

To the Reader.

benefit to be resolved , as the errors thereof are more universall ; and therefore more prejudiciall to the society of mankind: These I have selected out of many ; and having turned over divers Casuists, have pitch't upon these Decisions, which I hold most conformable to enlightened reason , and religion : sometimes I follow them, & sometimes I leave them for a better Guide.

In

To the Reader.

In the handling of all which, would I have affected that course, which *Seneca* blames in his *Albutius*, to say all that might be spoken, I could easily have been more Voluminous, though perhaps not more satisfactory. If these lines meet with different judgments, I cannot blame either my selfe, or them. It is the opinion of some Schoolmen (which seems to be made good by that

To the Reader.

instance in the Prophet *Daniel**) that even the good Angels themselves may holily vary in the way, though they perfectly meet in the end : It is farre from my thoughts to obtrude these my Resolutions as peremptory, and magisteriall upon my Readers, I onely tender them submissely, as probable advices to the simpler sort of Christians;

Dan. 10. 13. 20, 21. 12. 1.

and

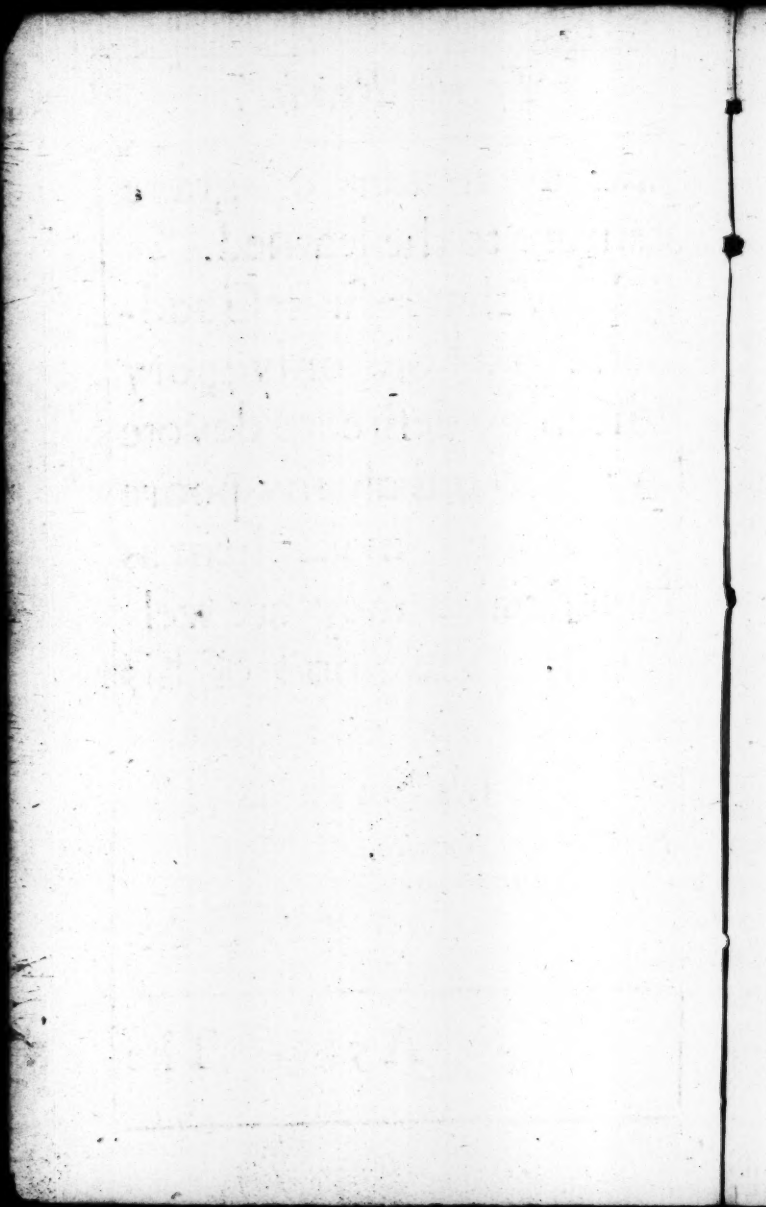
To the Reader.

and as matter of grave
censure to the learned.

May that infinite Good-
nesse to whose only glory
I humbly desire to devote
my selfe and all my poore
indeavours, make them as
beneficial, as they are wel-
meant to the good of his
Church, by the unwor-
thiest of his Servants

*Higham near Norwich,
March 29. 1650.*

J.H.B.N.





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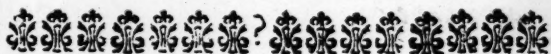
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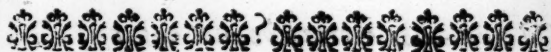
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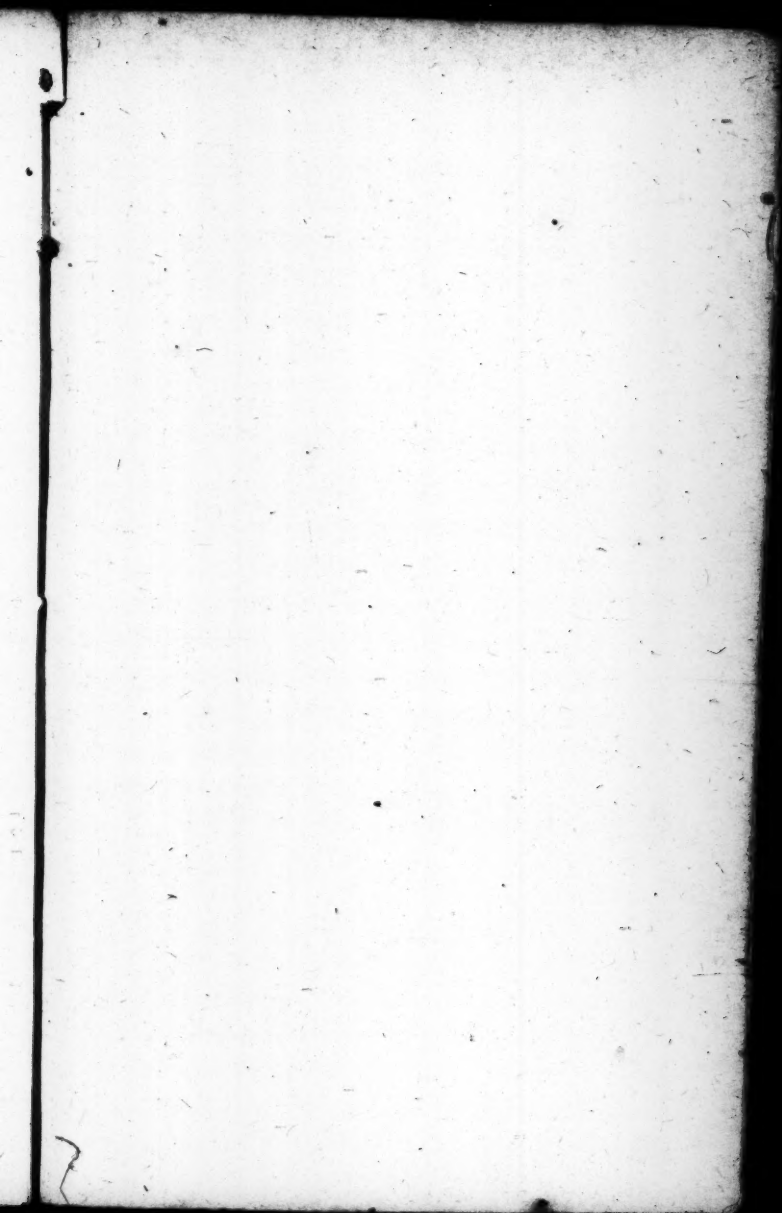
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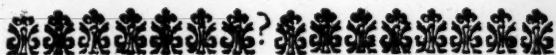
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that we have a system of
contracted, of which
in the future, known as
a system of a few
which the children are born in
that we have, ought to be made
known and presented to a whole
that





I Have perused these foure Decades of Practicall Cases of Conscience with much satisfaction and delight, and finde them to be, in respect of their subject matter, so profitable, necessary and daily usefull; and so piously, learnedly and judiciously discussed and resolved, that they seem unto me best, though they come last, (like the Wine in the marriage feast made sacred by Christs divine presence and miracle) and therefore doe well deserve (amongst many other the divine dishes and delicacies, wherewith this right reverend, pious and learned Authour hath plentifully furnished a feast for the spirituall nourishment and comfortable refreshing of Gods guests) both the approbation and commendation of all, and my selfe amongst the rest, though unworthy to passe my censure on such a subject.

John Downname.





RESOLUTIONS.

The first Decade.

Cases of Profit and Traffick.

CASE I.

*Whether is it lawfull for me to raise
any profit by the loane of money?*



OU may not expect a positive answer either way: Many circumstances are considerable ere any thing can be determined.

First, who is it that borrowes? A poore neighbour that is constrained out of neede? or a Merchant that

B

takes

takes up money for a freer trade ? or a rich man that layes it out upon superfluous occasions ?

If a poore man borrow out of necessity, you may not expect any profit for the loane : (*Deuteronomy* 15. 7, 8, 9.) To the poorest of all we must give, and not lend : to the next ranke of poore we must lend freely : but if a man will borrow that money (which you could improve) for the enriching of himselfe ; or out of a wanton expence will be laying out that which might be otherwise usefull to you, for his meere pleasure, the case is different ; for God hath not commanded you to love any man more then your selfe ; and there can be no reason why you should vail your owne just advantage to another mans excessse.

Secondly, upon what termes doe you lend ? whether upon an absolute compact for a set increment, (what ever

ever become of the principall or upon a friendly trust to a voluntary satisfaction according to the good improvement of the summe lent? The former is not safe, and where there hath been an honest endeavour of a just benefit disappointed either by unavoidable casualty, or force, may not be rigorously urged, without manifest oppression. The latter can be no other then lawfull: and with those that are truly faithfull and conscionable, the bond of gratitude is no lesse strong then that of law and justice.

Thirdly, if upon absolute compact; is it upon a certainty, or an adventure? for where you are willing to hazard the principall, there can be no reason but you should expect to take part of the advantage.

Fourthly, where the trade is ordinarily certaine, there are yet farther considerations to be had: to which

shall make way by these undenyable grounds.

That the value of moneys or other commodities is arbitrable according to the soveraigne authority and use of severall Kingdomes and Countries.

That whatsoever commodity is saleable, is capable of a profit in the loane of it; as an horse, or an oxe, being that it may be sold, may be let out for profit.

Money it selfe is not onely the price of all commodities in all civill Nations, but it is also, in some cases, a trafiqueable commodity: the price whereof rises, and falls in severall countries upon occasion; and yeeldeth either profit or losse in the exchange.

There can be no doubt therefore but that money thus considered, and as it were turned merchandise, may be bought and sold, and improved to a just profit.

But

But the maine doubt is, whether money meerely considered as the price of all other commodities, may be let forth for profit; and be capable of a warrantable increase. For the resolving whereof be it determined,

That all usury, which is an absolute contract for the meere loane of money, is unlawfull both by law naturall, and positive, both divine and humane.

Nature teacheth us that metals are not a thing capable of a superfoetation; that no man ought to set a price on that which is not his owne time: that the use of the stock once received, is not the lenders, but the borrowers; for the power, and right of disposing the principall, is by contract transferred for the time to the hands of him that receives it; so as hee that takes the interest by vertue of such transaction, doth but in a man-

nerly and legall fashion rob the borrower.

How frequent the * Scripture is in the prohibition of this practice, no Christian can bee ignorant: And as for humane lawes raised even from the meere light of Nature amongst Heathen Nations, how odious, and severely interdicted usury contracts, have been in all times, it appeares sufficiently by the Records which wee have of the Decrees of (a) *Egypt*, of *Athens*, of *Rome*; and not onely by the restraint of the Twelve Tables, and of *Claudius* and *Vespasian*; but by the absolute forbiddance of many popular statutes condemning this usage: *Tiberius* himselfe, though otherwise wicked enough, yet would rather furnish the Bankes with his owne stock, to bee freely let out for

* Exod. 22. 25. Levit. 25. 36, 37. Deut. 23. 19, 20. Nehem. 5. 7. Psal. 15. 5. Prov. 28. 8. Ezek. 18. 8.
(a) Vid. Alexand. ab Alexand. Gen. dierum l. i. c. 7.

three yeeres to the Citizens, upon onely security of the summe doubled in the forfeiture, then he would endure this griping & oppressive transaction: And how wise *Cato* drove out all usurers out of *Sicilie*, and *Lucullus* freed all *Asia* from this pressure of Interest, History hath sufficiently recorded.

As for Lawes Ecclesiasticall, let it be enough that a * Councel hath defined, that to say usury is not a sinne, is no better then heresie: and in succeeding times how liable the usurer hath ever been to the highest censures of the Church; and how excluded from the favour of Christian buriall, is more manifest then to need any prooffe.

Secondly, however it is unlawfull to covenant for a certaine profit for the mere loane of money, yet there may be, and are circumstances ap-

* Concil. Viennens.

pending to the loane, which may admit of ſome benefit to be lawfully made by the lender for the uſe of his money; and eſpecially theſe two; the loſſe that he ſuſtaines, and the gaine that he miſſes, by the want of the ſumme lent: For what reaſon can there be, that to pleaſure another man, I ſhould hurt my ſelfe, that I ſhould enrich another by my owne loſſe?

If then I ſhall incur a reall loſſe or forfeiture by the delayed payment of the ſumme lent; I may juſtly look for a ſatisfaction from the borrower; yea if there be a true danger of loſſe to me imminent, when the tranſaction is made, nothing hinders but that I may by compact make ſure ſuch a ſumme as may be ſufficient for my indemnity; And if I ſee an opportunity of an apparent profit that I could make fairely by diſburſing of ſuch a ſumme *bona fide*, and another

ther that hath a more gainfull bargain in chace shall sue to me to borrow my money out of my hand for his owne greater advantage, there can be no reason why in such a case I should have more respect to his profit, then my owne; and why should I not even upon pact, secure unto my selfe such a moderate summe as may be somewhat answerable to the gain which I doe willingly forgoe, for his greater profit? Since it is a true ground which *Lessius* (with other Casuists) maintains against *Sotus* and *Durand*, that even our hopes of an evident commodity are valuable; and that no lesse then the feares of our losse.

Shortly, for the guidance of our either caution, or liberty in matter of borrowing, and lending, the onely Cynosure is our *Charity*; for in all humane and civill acts of Commerce, it is a sure rule, That what-

ſoever is not a violation of Charity cannot be unlawfull, and whatſoever is not agreeable to Charity can be no other then ſinfull: And as Charity muſt be your rule, ſo your ſelfe muſt be the rule of your Charity; Looke what you could wiſh to be done to you by others, doe but the ſame to others, you cannot be guilty of the breach of Charity: The maximes of Traffique are almoſt infinite; onely Charity (but ever inſeparable from Juſtice) muſt make the application of them; That will teach you that every increaſe by loane of money is not uſurary; and that thoſe which are abſolutely ſuch, are damnable: that will teach you to diſtinguiſh betwixt the one improvement of loane, and the other; and will tell you that if you can finde out a way, whether by loane, or ſale, to advance your ſtock, that may be free from all oppreſſion, and extortion; and beneficiall as well

well to others, as to your selfe, you need not feare to walke in it with all honest security: but in the meane time take good heed that your heart beguile you not in mis-applications; for we are naturally too apt out of our self-love to flatter our selves with faire glozes of bad intentions; and rather to draw the rule to us, then our selves to the rule.

But whiles I give you this short solution, I must professe to lament the common ignorance, or mistaking of too many Christians, whose zeal justly cries downe usury as a most hateful and abominable practice, but in the meane time makes no bones of actions no lesse biting, and oppressive: they care not how high they sell any of their commodities, at how unreasonable rates they let their grounds, how they circumvent the buyer in their bargaines, and thinke any price just, any gaine lawfull that they can
make

make in their markets : not conſidering that there is neither leſſe, nor leſſe odious uſury in ſelling and letting, then there is in lending : It is the extortion in both that makes the ſinne ; without which the kind or termes of the tranſaction could not be guilty. Surely it muſt needs be a great weakneſſe to think that the ſame God who requires mercy and favour in lending, will allow us to be cruell in ſelling ; Rigour and exceſſe in both equally violates the law of commutative Juſtice, equally croſſes the law of Charity : Let thoſe therefore that make ſcruple of an uſurious lending, learne to make no leſſe conſcience of a racking bargaine ; otherwiſe their partiall obedience will argue a groſſe hypocrifiſie ; and they ſhall prove themſelves the worſt kinde of what they hate, uſurers : For in the ordinary loan-uſury, the borrower hath yet time to boot for his money ; but here
the

the buyer payes downe an excessive interest, without any consideration at all, but the sellers cruelty. For the fuller clearing of which point ; where-as you aske

CASE II.

Whether may I not sell my wares as deare as I can, and get what I may of every buyer ?

I answer,

THere is a due price to be set up-
on every saleable commodity;
else there were no commerce to be
used among men : For if every man
might set what rate he pleases upon
his lands or goods, where should he
finde a buyer ? surely nothing could
follow but confusion, and want ; for
mere extremity must both make the
market and regulate it.

The due price is that which cuts
equally

equally and indifferently betwixt the buyer and ſeller ; ſo as the ſeller may receive a moderate gaine, and the buyer a juſt penny-worth.

In thoſe countries wherein there is a price ſet by publique authority upon all marketable commodities, the way of commerce is well expedited, and it is ſoone and eaſily determined, that it is meete men ſhould be held cloſe to the rule.

But where all things are left to an arbitrary tranſaction, there were no living, if ſome limits were not ſet to the ſellers demands.

Theſe limits muſt be the ordinary received proportion of price current in the ſeverall countries wherein they are ſold ; and the judgement of diſcreet, wiſe, experienced and unconcerned perſons ; and the well-ſtated conſcience of the ſeller.

If men ſhall wilfully run beyond theſe bounds, taking advantage of
the

the rarenesse of the commodity, the paucity or the necessity of the buyers to enhance the price to an unreasonable height, they shall be guilty of the breach of charity, and in making a finfull bargaine purchase a curse.

Not that a man is so strictly tyed to any others valuation, as that hee may not upon any occasion aske or receive more then the common price; or that if the market rise he is bound to sit still: There may be just reason upon a generall mortality of cattle to set those beasts that remaine at an higher rate, or upon a dearth of graine, or other commodities, to heighten the price; but in such cases wee must bee so affected as that wee grudge to our selves our owne gaine, that wee bee not in the first file of enhancers, that wee strive to be the lowest in our valuation, and labour what we may to bring downe the market; alwaies putting our selves in our
con-

conceits into the buyers roome ; and bethinking how we would wish to be dealt with, if we were in his cloathes.

It is lawfull for the seller in his price to have regard not to his rents and disbursements onely, but to his labour, and cost, to his delay of benefit, to his loss in managing, to his hazard or difficulty in conveyance ; but all these in such moderation, as that he may be a just gainer by the bargain: not setting the dice upon the buyer ; not making too much haste to be rich, by the secret spoiles of an oppressed neighbour.

Those things whose end is onely pleasure or ornament, as a Jewel, an Hauke, or an Hound, can admit of no certaine value ; the owners affection must estimate it, and the buyers desire must make up an illimited bargain ; but even in these, and all other commodities that carry the face of unnecessary, Conscience must be the

Clarke

Clarke of the Market ; and tell us that we must so sell, as we could be willing to buy. From all which it followes,

That the common maxime current * in the shops of trade, that things are so much worth as they can be sold for ; and those ordinary rules of chapmen, that men who are masters of their wares may heighten their prices at pleasure, and get what they can out of all commers ; and what ever they can get out of the simplicity, or necessity of the buyers, is lawfull prize, are damnably uncharitable and unjust.

It were an happy thing, if as it is in some other well ordered nations, there were a certaine regulation of the prices of all commodities by publique authority, the wisdome whereof knows how to rise and fall accor-

* Dom.Sot.de Justit. & Jure l.6. quæst. 2. Artic. 3. tradit hoc ut Axioma Jurisconsultorum.

ding to the necessity of the occasion ; so as the buyer might be secured from injury, and the seller restrained from a lawlesse oppression. But where that cannot be had , it is fit that Justice and Charity should so far overrule mens actions, that every man may not be carryed in matter of contract, by the sway of his owne unreasonable will, and be free to carve for himselfe as he lists of the buyers purse : every man hath a bird in his bosome that sings to him another note.

A good conscience therefore will tell you that if (taking advantage of the ignorance or unskilfulnesse of the buyer) you have made a prey of him by drawing from him double the worth of the commodity sold , you are bound to make restitution to him accordingly, and in a proportion so, in all the considerable summes which you shall have by your false protestations,

tions, and oathes, and plausible intimations wrought out from an abused buyer; above that due price which would make you a just and rightly moderated gainer: For assure your selfe, all that you willingly doe this way is but a better-coloured picking of purses; and what you thus get is but stolne goods varnisht over with the pretence of a calling, and will prove at the last no other then gravel in your throat.

CASE III.

Whether is the seller bound to make knowne to the buyer the faults of that which he is about to sell?

IT is a question that was long since disputed betwixt the Heathen Sages, *Antipater* and *Diogenes*, as *Cicero** informes us: with whom *Cato*

* *Tul. de Offic. l. 3.*

ſo decides it as that his judgement may juſtly ſhame and condemne the practice of too many Chriſtians: For a full answer, due conſideration muſt be had of divers circumſtances.

First, what the nature and quality of the fault is; whether it be ſleight and unimporting; or whether ſuch as may vitiate the thing ſold, and render it either unuſefull or dangerous to the buyer: or againe, whether the fault be apparent, or ſecret: both theſe doe juſtly vary the caſe: ſleight and harmeleſſ faults may bee concealed without injuſtice; main and importing muſt be ſignified: if apparent defects bee not diſcerned by the buyer hee may thanke himſelfe; ſecret faults knowne onely to the ſeller, (ſuch as may be prejudiciall to the buyer) ought not to be concealed, or if they be concealed ſo, as that the buyer payes for it as ſound, and perfect, binde the ſeller in conſcience,
either

either to void the bargain, or to give just satisfaction.

Secondly, it would be considered, whether the buyer before the bargain be stricken, hath required of the seller to signifie the faults of the commodity to be sold, and out of a reliance upon the sellers fidelity and warrant, hath made up the match : or whether in the confidence of his owne skill, without moving any question, hee enter resolutely, (*de bene esse*) upon the bargained commodity : If the former, a double bond lyes upon the seller to deale faithfully with the buyer, and therefore to let him know the true condition of the thing exposed to sale, that so either he may take off his hand; or if he shall see that notwithstanding that defect it may serve his turne, he may proportion the price accordingly: otherwise he shall be guilty (besides falshood and oppression) of perfidiousnesse.

ousnesse. But if the buyer will peremptorily rely upon his owne judgement, and as presuming to make a gaine of that bargaine (which the seller out of conscience of the imperfection, sets (as hee ought) so much lower as the defect may bee more disadvantageous to the buyer) will goe through with the contract, and stand to all hazards, I see no reason why the seller may not receive the price stipulated; but withall if the match may carry danger in it to the buyer, (as if the horse sold bee subject to a perilous starting, or stumbling; the house sold have a secret crack that may threaten ruine; or the land sold be lyable to a litigious claime which may be timely avoyded) the seller is bound in conscience (at least after the bargaine) to intimate unto the buyer these faulty qualities, that hee may accordingly provide for the prevention of the mischiefe that may ensue.

But

But if the seller shall use art to cover the defects of his commodity, that so he may deceive the buyer in his judgement of the thing bargained for, or shall mix faulty wares with sound, that they may passe undiscovered, he is more faulty then his wares, and makes an ill bargain for his soule. In this, shortly, and in all other cases that concerne trade, these universall rules must take place. That it is not lawfull for a Christian chapman to thrive by fraud. That hee may sell upon no other termes then he could wish to buy. That his profit must be regulated by his conscience, not his conscience by his profit. That he is bound either to prevent the buyers wrong; or if heedlessly done, to satisfie it. That he ought rather to affect to be honest, then rich: And lastly, that as he is a member of a community both civill and Christian, he ought to be tender of another

another mans indemnity no leſſe then of his owne.

CASE IV.

Whether may I ſell my commodities the dearer for giving dayes of payment ?

THere is no great difference betwixt this caſe, and that of loane, which is formerly answered; ſave that there money is let, here commodities money-worth; here is a ſale, there a lending; in the one a transferring of the right and command for the time; in the other perpetually; but the ſubſtance both of the matter and queſtion is the ſame; for in both there ſeemes to be a valuation of time: which whether in caſe of mutuation, or ſale, may juſtly be ſuſpected for unlawfull.

For

For answer ;

There are three stages of prices acknowledged by all Casuists ; the highest, which they are wont to call Rigorous ; the meane, and the lowest ; If these keep within due bounds, though the highest be hard, yet it is not unjust, and if the lowest be favorable, yet it is not alwayes necessary.

If then you shall proportion but a just price to the time, and worth of your bargaine, so as the present shall passe for the easiest price, some short time for the meane, and the longer delay for the highest, I see not wherein, all things considered, you doe offend.

And certainly to debarre the contract of a moderate gaine for the delay of payment upon moneths prefixed, were to destroy all trade of merchandise : For not many buyers are furnished with ready money to

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buy

buy their wares, at the Port; nor could the sellers make off their commodities so seasonably, as to be ready for further traffique, if they must necessarily be tyed to wait upon the hopes of a pecuniary sale; and not left to the common liberty of putting them over to whole-sale men upon trust; who upon a second trust distribute them to those, that vent them by retaile, both for days agreed upon: By which meanes the trade holds up, and the common-wealth enjoys the benefit of a convenient and necessary commerce.

A practice that is now so habituated amongst all nations into the course of trade, that it cannot well consist without it: So as nothing is more ordinary in experience than that those, who are able to pay downe ready money for their wares, know to expect a better pennyworth, then those that runne upon trust: And there

there may be just reason for this difference; For the present money received enables the seller to a further improvement of his stock, which lyes for the time dead in the hands that take day for their payment.

So then, it is not mere time that is here set to sale, which were odious in any Christian to bargain for; but there are two incidents into this practice which may render it not unwarrantable. The one is the hazard of the summe agreed upon: which too often comes short in the payment: while those subordinate chapmen, into whose hand the grosse summe is scattered, turne bankrupts, and forfeit their trust; so as no small losse is this way commonly sustained by the confident seller; in which regard we are wont to say justly, that One bird in the hand is worth two in the wood. The other is the cessation of that gaine which the merchant might

in the meane time have made of the sum deferred; which might in likelihood have beene greater then the proportion of the raised price can amount unto; to which may be added the foreseene probability of the raising of the market in the intervall of payment: the profit whereof is precluded by this meanes to the seller, whose full engagement takes him off perhaps from a resolution to have reserved those commodities in his own hands, in expectation of an opportunity of a more profitable utterance, had not the forwardnesse of the buyer importuned a prevention.

Upon these considerations, if they be serious, and unfained; I see not why you may not in a due and moderate proportion, difference your prices according to the delayes of payment, without any oppression to the buyer: Howbeit, if any man pleaseth to be so free, as to take no notice

notice of time, but to make future dayes in his account present, I shall commend his charity, though I dare not presse his example as necessary.

The case is equally just on the behalfe of the seller: who if he be either driven by some emergent necessity; or drawne by the opportunity of a more gainfull bargaine, to call for his money before his day, may justly be required by the late buyer, to abate of the returnable summe, in regard of the prevention of the time covenanted; by reason of the inconvenience or losse whereunto he is put upon the suddaine revocation of that money, which is not by agreement payable till the expiration of the time prefixed. But what quantity is to be allowed on the one part, or defalked on the other, is onely to be moderated by Christian Charity, and that universall rule of doing what we would be willing to suffer.

C A S E V.

Whether, and how farre, Monopolies are, or may be lawfull.

THe most famous Monopolie that we finde in history is that of *Egypt*, Gen. 41. 56, 57. wherein the provident Patriarch *Joseph*, out of the fore-sight of a following dearth, bought up the seven yeares graine for *Pharaoh*, and layd it up in publique store-houses; and in the generall scarcity sold it out to the inhabitants, and strangers, with no small advantage; which was so farre from unlawfull, as that he thereby merited the name of the Saviour of *Egypt*: * and if any worthy Patriot out of a like providence, shall before-hand gather up the commodiries of his country into a publique Magazine

* So the Vulgar renders *Zaphnath paneah* *Salvator mundi*, Gen. 41. 45.

for the common benefit and reliefe of the people, upon the pinch of an ensuing necessity, he is so farre out of the reach of censure, as that he well deserves a statue with the Inscription of Publique Benefactor; So as it is not the meere act of Monopolizing that makes the thing unlawfull, but the ground and intention, and the manner of carriage.

All Monopolies, as they are usually practised, are either such as are allowed by Sovereigne authority, or privately contrived by secret plot and convention for a peculiar gaine to some speciall persons. If the first, it must be considered upon what reason that priviledge is granted, and upon what termes; If both these be just, the grant can be no other. For first, it may not be denyed, that supreme authority, whether of Princes or States, hath power to grant such priviledges where they shall finde just

cause; and secondly, that there may be very just motives of granting them to some capable and worthy persons; I should be ashamed to imagine that either of these should need any probation.

Doubtlesse then, there is manifest equity, that where there hath beene some great merit, or charge, or danger in the compassing of some notable worke for a common good, the undertaker should be rewarded with a patent for a secured profit to himselfe. As put case some well minded Printer (as one of the *Stephens*) is willing to be at an excessive charge in the faire publication of a learned and usefull worke for the benefit of the present and following ages; it is most just that he should from the hands of Princes or States receive a Priviledge for the sole impression; that he may recover, with advantage, the deep expence he hath beene at;
Other-

Otherwise some Interloper may perhaps underhand fall upon the work at a lower rate, and undoe the first editor ; whose industry, care and cost shall thus be recompenced with the ruine of himselfe and his posterity ; as were too easie to instance.

If a man have by notable dexterity of wit, and art ; and much labour and charge after many experiments, attained to the skill of making some rare engine of excellent use for the service of his Prince and Countrey, as some singular water worke ; or some beneficiall instrument for the freeing of navigable rivers from their sandy obstructions, it is all the reason in the world, that by the just bounty of Princes he should be so far remunerated, as that he alone may receive a patent of enjoying a due profit of his owne invention.

But how farre it may be lawfull for a Prince, not onely to gratifie a

well deſerving Subject, with the fee of his owne deviſe, but with a profit ariſing from the ſole ſale of marketable commodities through his Kingdome; or whether, and how farre in the want of monies, for the neceſſary ſervice of his State, he may for the publique uſe, raiſe, ſet, or ſell monopolies of that kind, is diverſly agitated by Caſuiſts; and muſt receive answer according to the abſolute-
neſſe or limitation of thoſe Govern-
ments, under which they are pra-
ctiſed: But with this, that where this
is done, there may be great care had
of a juſt price to be ſet upon the com-
modities ſo reſtrained, that they be
not left to the lawleſſe will of a pri-
viledged ingroſſer, nor heightned to
an undue rate by reaſon of a particular
indulgence.

This may be enough for authori-
tative Monopolies. The common
ſort of offensive practices this way
are

are private and single, or conventionall, and plotted by combination; The former, as when some coverous extortioner, out of the strength of his purse, buyes up the whole lading of the ship, that he may have the sole power of the wares to sell them at pleasure, which, there is no feare but he will doe with rigour enough: The true judgment of which action, & the degrees of the malignity of it, must be fetcht, as from the minde, so from the management of the buyer; as being so much more sinfull, as it partakes more of oppression. The latter, when some brethren in evill conspire to prevent the harvest, to buy up, or hoord up the graine; with a purpose to starve the market, and to hatch up a dearth: A damnable practice in both kindes; and that which hath of old beene branded with a curse; neither lesse full of justice than uncharitableness; and that which cries aloud.

aloud, for a just punishment, and satisfactory restitution.

I cannot therefore but marvaile at the opinion of learned *Lesſius* (which he fathers also upon *Molina*) that too favourably minces the hainousnesse of this sin; bearing us in hand, that it is indeed an offence against charity, and common profit, but not against particular Justice, His reason: To buy that corne (saith he) could not be against justice, for he bought it at the current price: Nor yet to sell it, could be against justice, because he was not tyed out of justice at that time to bring it forth to sale: When he might easily have considered, that it is not the mere act of buying, or of not selling, that in it selfe is accused for unjust, but to buy, or not to sell, with an intention, and issue of oppressing others, and undue enriching themselves by a dearth. For what can be more unjust then for a man to
indeavour

indeavour to raise himself by the affa-
mishing of others ?

Neither can it serve his turne to say
by way of excuse, that the multitude
of buyers may be the cause of a
dearth, and yet without sin ; since
they doe rather occasion, then cause a
scarcity ; and are so farre from inten-
ding a dearth in making their market,
that they deprecate it, as their great
affliction.

And if, by his owne confession,
those, who either by force, or fraud
hinder the importation of corne, that
a dearth may continue, are guilty of
injustice, and are bound to make re-
stitution both to the Commonwealt
in giving cause to raise the price ; as
also to the Merchant, whom they
have hindered of his meet gaine ;
how can those be liable to a lesse sin,
or punishment, that either buy up,
or wilfully keep in, their graine with
a purpose to begin, and hold on a
dearth :

dearth? and what leſſe can it be then force or fraud, that by their crafty and cruell prevention the poor are neceſſitated to want that ſuſtenance, whereby their life ſhould be maintained?

Wiſe *Solomon* ſhall ſhut up this Scene for me. *He that withholdſ corn, the People ſhall curſe him, but bleſſings ſhall be upon the head of him that ſelleth it.* Prov. 11. 26.

C A S E VI.

Whether, and how farre doth the fraudulent bargaine binde me to performance.

HOW farre in matter of law, you muſt adviſe with other Counſaile, but for matter of conſcience, take this:

Is the fraud actively yours, done by you to another? or elſe paſſively put by

by another upon you? If the former, you are bound to repent and satisfie; either by rescinding the match, or by making amends for the injury: If the latter; wherein did the fraud lye? If in the maine substance of the thing sold, the bargaine is both by the very law of nature, and in conscience, void; yea indeed, not at all: as if a man have sold you copper lace for gold; or alchymie-plate for silver; the reason is well given by * Casuists: There is no bargaine without a consent; and here is no consent at all, whiles both parties pitch not upon the same subject; the buyer propounds to himselfe gold and silver, the seller obtrudes copper, and Alchymie; the one therefore not buying what the other pretended to sell, here is no bargaine made, but a mere act of cozenage, justly liable to punishment by all lawes of God and

* Lessius l. 2. c. 17. dub. 5.

man. But if the fraud were onely in ſome circumſtances, as in ſome faulty condition of the thing ſold not before diſcerned; or in the over-prizing of the commoditie bought; the old rule is, *Caveat emptor*; You muſt for ought I know hold you to your bargain; but if that faulty condition be of ſo high a nature that it marres the commoditie, and makes it uſeſſe to the buyer, the ſeller (being conſcious of the fault) is injurious in the tranſaction, and is bound in conſcience to make ſatisfaction; and if he have willingly over-reacht you in the price, in a conſiderable proportion is guilty of oppreſſion.

It is very memorable in this kinde that *Cicero* relates to us of a fraudulent bargaine betwixt * *Canius*, a Roman Knight and Orator, and one *Pythius* a Banker of *Syracuse*. *Canius* comming upon occaſion of pleading

* *Cicero*. de Offic. l. 3. Sect. 48.

to the city of *Syracuse*, tooke a great liking to the place; and settling there, gave out that he had a great desire to buy some one of those pleasant gardens, wherewith, it seemes, that city abounded; that he might there recreate himself when he pleased, with his friends.

Pythius, a crafty merchant, hearing of it, sends word to *Canius*, that hee had a faire garden which he had no mind to sell; but if he pleased to make use of it for his solace, he might command it as his owne; and withall courteously invites *Canius* to suppe with him there the day following: In the meane time being a man by reason of his trade of exchange, very gracious in the city, he calls the fishermen together, and desires them that the next evening they would fish in the streame before his garden, and bring him, what they shall have caught: *Canius* in due time comes
accor-

according to the invitation, to supper; where there was delicate provision made for him by *Pythius*; and store of boates bringing in their plentiful draughts of fish, and casting them downe at the feet of *Pythius*: *Canius* asks the meaning of this concourse of Fishermen, and store of proffered provision? *Pythius* tells him this is the commodity and priviledge of the place,, if *Syracuse* yeeld any fish, here it is caught, and here tendered; *Canius* beleeving the report, importunes his host to sell him the ground: the owner after some seeming loathnesse, and squeamish reluctance, at last yeelds to gratifie him with the bargaine: The deare price is payd downe with much eagernesse. The new master of the place, in much pride of his purchase, the next day repaires early to his garden, invites his friends to a friday feast; and finding no boat there, asks the neighbour

bour whether it were holiday with the fishermen, that he saw none of them there; No, said the good man, none that I know; but none of the trade use to fish here; and I much marvelled at the strange confluence of their boats here yesterday: The Roman Orator was downe in the mouth; finding himselfe thus cheated by the money-changer: but, for ought I see, had his amends in his hands; He meant, and desired to buy the place, though without any such accommodation; but over-bought it upon the false pretence of an appendent commodity; the injury was the sellers, the losse must be the buyers.

But if such be the case, that you are meereley drawne in by the fraud, and would not have bought the commodity at all, if you had not beene induced by the deceit, and false oathes and warrants of the seller, you have

have just reason, either, if you may, to fall off from the bargain; or, if the matter be valuable, to require a just satisfaction from the seller; who is bound in conscience, either by annulling the bargain, or abatement of price to make good your indemnity.

In these matters of contract there is great reason to distinguish betwixt a willing deceit, and an involuntary wrong; If a man shall fraudulently sell an horse which he knowes secretly and incurably diseased, to another for sound; and that other, believing the sellers deep protestation, shall upon the same price, *bonâ fide*, put him off to me; I feel my selfe injured, but whither shall I go for an amends? I cannot challenge the immediate seller, for he deceived me not; I cannot challenge the deceiver, for he dealt not with me; In humane lawes, I am left remediless; but in the law of

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conscience, the first seller, who ought to have born his own burthen of an inevitable losse, is bound to transference by the hands that sold me that injurious bargain, a due satisfaction.

Neither is it other of fraudulent conveyances in the houses or land, how ever the matter may be intricated by passing through many perhaps unknowing hands, yet the sinne and obligation to satisfaction, will necessarily lie at the first door; whence if just restitution doe not follow, the seller may purchase Hell to boot.

Think not now on this discourse, that the onely fraud is in selling; there may be no lesse (though not so frequent) fraud in buying also; whether in unjust payment, by false coyne; or by injustice of quantities, as in buying by weights, or measures above allowance; or by wrong valuation of the substance & quality of the

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commodity, misknown by the seller ; As for instance, a simple man, as I have knowne it done in the Western parts, findes a parcell of Ambergris cast upon the sands ; he perceiving it to be some unctious matter, puts it to the base use of his shoes, or his cart wheel ; a merchant that smells the worth of the stufte buyes it of him for a small summe ; giving him a shilling or two, for that which himselfe knowes to be worth twenty pounds : the bargaine is fraudulent ; and requires a proportionable compensation to the ignorant seller into whose hands providence hath cast so rich a booty.

Shortly, in all these intercourses of trade, that old and just rule which had wont to sway the traffique of heathens, must much more take place amongst Christians, (*cum bonis benè agier*) that honest men must be honestly dealt with: and therefore

fore that all fraud must be banished out of their markets ; or, if it dares to intrude, soundly punished ; and mulcted with a due satisfaction.

CASE VII.

How far, and when am I bound to make restitution of another mans goods remaining in my hand ?

Restitution is a duty no lesse necessary, than rarely practised amongst Christians. The Arch-publican *Zacheus* knew that with this he must begin his conversion ; and that knowne rule of Saint *Austen* * is in every mans mouth , No remission without restitution. For this act is no small piece of commutative Justice ; which requires that every man should have his owne : Most just therefore it is, that what you have taken , or

* Aug. epist. 54: ad Macedon.

detained from the true owner should be restored; neither can it be sufficient, that you have conceived a drye and bootlesse sorrow for your wrongfull detention, unlesse you also make amends to him by a reall compensation.

But you are disabled to make restitution by reason of want, your will is good, but the necessity, into which you are fallen, makes you incapable of performance: See first, that it be a true, and not fained necessity; Many a one, like to leud cripples that pretend false soares, counterfeit a need that is not, and shelter themselves in a willing Jaile, there living merrily upon there defrauded creditor, whom they might honestly satisfie by a well improved libertie: This case is damnably unjust; but if it be a true necessity of Gods making, it must excuse you for the time; till the same hand that did
cast

cast you downe, shall be pleased to raise you up againe; then, you are bound to satisfie; and in the meane time, lay the case truly before your creditor, who if he be not mercilesse, where he sees a reall desire, and indeavour of satisfaction, will imitate his God in accepting the will for the deed: and wait patiently for the recovery of your estate.

You ask now, to whom you should tender restitution?

To whom, but the owner? But he, you say, is dead; That will not excuse you; he lives still in his heires; It is memorable (though in a small matter) which *Seneca* reports of a Pythagorean Philosopher at *Athens*, who having run upon the score for his shooes at a shop there; hearing that the shoemaker was dead, at first was glad to think the debt was now paid; but straight recollecting himselfe, he sayes within himselfe; Yet, howso-

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ever,

ever, the shoemaker lives still to thee, though dead to others; and thereupon puts his money into the shop, as supposing that both of them would finde an owner. It is a rare case that a man dyes, and leaves no body in whom his right survives: But if there be neither heire, nor executor, nor administrator, nor assigne; the poore (saith our Saviour) ye shall have alwayes with you; Make thou them his heire: Turne your debt into almes.

Obj. But alas you say; I am poore my selfe, what need I then look forth for any other? Why may not I employ my restitution to the reliefe of my owne necessity?

Sol. It is dangerous, and cannot be just for a man to be his owne carver altogether in a business of this nature; You must look upon this money, as no more yours than a strangers; and howsoever it be most true that every
man

man is nearest to himselfe, and hath reason to wish to bee a sharer, where the need is equall; yet it is fit this should be done with the knowledge and approbation of others: Your Pastor, and those other that are by authority interess'd in these publique cares, are fit to be acquainted with the case; (if it be in a matter meet to be notified) as a businesse of debt or pecuniary ingagement, let their wisdome proportion the distribution; But if it be in the case of some secret crime, as of theft, or cozenage, which you would keep as close as your owne heart, the restitution must be charged upon your conscience to be made with so much more impartiality, as you desire it more to be concealed; Herein have a care of your soule, what ever becomes of your estate.

As for the time of restitution it is easily determined, that it cannot

well be too ſoone for the diſcharge of your conſcience, it may be too late for the occaſions of him to whom it is due; Although it may fall out, that it may prove more fit to deferre for the good of both: wherein charity and juſtice muſt be called in as arbitrators; The owner calls for his money in a riotous humour to miſpend it upon his unlawfull pleaſure; if your delay may prevent the miſchiefe, the forbearance is an act of mercy: The owner calls for a ſword deposited with you, which you have cauſe to ſuſpect he meanes to make uſe of, for ſome ill purpoſe; your forbearing to reſtore it is ſo both charitable and juſt, that your act of delivery of it may make you acceſſary to a murther. Whereto I may adde, that in the choice of the time, you may lawfully have ſome reſpect to your ſelfe; for if the preſent reſtitution ſhould be to your utter undoing,
which

which may be avoided by some reasonable delay, you have no reason to shun anothers inconvenience by your own inevitable ruine; in such case let the creditor be acquainted with the necessity, his offence deprecated; and rather put your selfe upon the mercy of a Chancery, then be guilty of your owne overthrow.

But when the power is in your hand, and the coast every way cleare, let not another mans goods or mony stick to their fingers; and thinke not that your head can long lye easily upon another mans pillow.

Yea, but you say the money or goods mis-carried, either by robbery or false trust, ere you could employ them to any profit at all; This will not excuse you; after they came in to your power, you are responsible for them; What compassion this may work in the good nature of the owner for the favour of an abate-

ment, must be left to his own brest; your tye to restitution is not the lesse; For it is supposed, had they remained in the owners hands they had been safe; if it were not your fault, yet it was your crosse, that they miscarried; and who should bear your crosse but your self?

Shortly then, after all pretences of excuse; the charge of wise *Solomon* must be obeyed: *With-hold not good from the owners thereof, when it is in the power of thine hand to doe it, Prov. 3, 17.*

CASE VIII.

Whether, and how farre doth a promise extorted by fear, though seconded by an oath, bind my conscience to performance?

A Mere promise is an honest mans strong obligation; but if it be
withall

withall backed with an oath, the bond is sacred, and inviolable.

But let me ask you what promise it is that you thus made, and bound; If it be of a thing unlawfull to be done, your promise and oath is so farre from binding you to performance, that it bindes you onely to repentance that ever you made it; In this case your performance would double and heighten your sinne: It was ill to promise, but it would be worse to performe: *Hered* is by oath ingaged for an indefinite favour to *Salome*; She pitches upon *John Baptist's* head; He was sory for such a choice, yet for his oaths sake hee thinks hee must make it good: Surely, *Hered* was ill-principled, that he could thinke a rash oath must binde him to murder an innocent; He might have truly said, this was more than he could doe; for that we can do, which we can lawfully doe.

But if it be a lawfull thing that you have thus promiſed, and ſworne; though the promiſe were unlawfully drawne from you by feare, I dare not perſwade you to violate it. It is true that divers learned Caſuiſts hold, that a promiſe drawne from a man by feare is void, or at leaſt revokable at pleaſure; and ſo alſo the oath annexed, which followes the nature of the act whereto it appends; chiefly upon this ground; that both theſe are done without conſent, meere involuntary acts, ſince nothing can be ſo contrary to conſent as force and feare: But I dare not goe along with them; for that I apprehend there is not an abſolute involuntarienneſſe in this engagement, but a mixt one, ſuch as the * Philoſopher determines in the Mariner, that caſts his goods over board to ſave his life; in it ſelfe, he hath no will to doe it; but here

* Ariſt. Eth. l. 2. c. 2.

and now upon this danger imminent, he hath an halfe-will to perform it.

Secondly, I build upon their owne ground; There is the same reason, they say, of force, and of fraud; now that a promise and oath drawne from us by fraud bindes strongly, we need no other instance then that of *Joshua* made to the *Gibeonites*; there could not be a greater fraud than lay hid in the old shooes, thred-bare garments, rent bottels, and mouldy provisions of those borderers; who under the pretence of a remote nation put themselves under the interest and protection of *Israel*: *Josh. 9. 12, 13.* &c. the guile soone proved apparent, yet durst not *Joshua*, though he found himselfe cheated into this covenant, fall off from the league made with them; which when, after many ages, *Saul* out of politique ends went about to have broken, we see how fearfully it was avenged with a grievous

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plague of famine upon *Israel*, even in *Dauids* dayes, 2 *Sam.* 21.1. who was no way accessary to the oppression; neither could be otherwise expiated than by the bleeding of *Saul's* bloody house. When once we have interested God in the businesse, it is dangerous not to be punctuall in the performance. If therefore a bold thiefe, taking you at an advantage, have set his dagger to your brest, and with big oathes threatned to stab you, unlesse you promise and sweare to give him an hundred pounds to be left on such a day in such a place for him, I see not how (if you be able) you can dispence with the performance; the onely help is, (which is well suggested by * *Lessius*) that nothing hinders why you may not, when you have done, call for it back againe, as unjustly extorted. And truly, we are beholding to the Jesuite for so much

* *Lessius* de Jure, &c. l.2. C.42. dub.6.

of a reall equivocation ; why should you not thus right your selfe, since you have onely tyed your selfe to a mere payment of the summe : upon staking it downe for him , you are free. But if he have fore'd you to promise , and swear not to make him knowne, you are bound to be silent in this act, concerning your selfe ; but withall, if you find that your silence may be prejudiciall to the publique good, for that you perceive the licentiousnesse of the offender proceeds (and is like so to doe) to the like mischief unto others , you ought, though not to accuse him for the fact done unto you ; yet to give warning to some in authority to have a vigilant eye upon so leud a person, for the prevention of any further villany.

But if it be in a businesse, whose perill rests onely in your selfe, the matter being lawfull to be done ;
your

your promise and oath (though forced from you) must hold you close to performance, notwithstanding the inconveniencies that attend. If therefore you are dismissed upon your Parole, for a certaine time, to returne home, and dispose of your affaires, and then to yield your selfe againe prisoner to an enemy; the obligation is so strict and firme, that no private respects may take it off: and it should be a just shame to you, that a * Pagan should out of common honesty hold himself bound to his word, (not without the danger of torment and death) when you that are a Christian slip away from your oath.

* Attilius Regulus.

CASE

CASE IV. IX

*Whether those moneys or goods which
I have found, may be safely taken
and kept by me to my owne use.*

IT is well distinguished by *Sotus* out of *Aquinas* *, that those things which may be found, are either such as call no man master, as some pearl, or precious stone, or Ambergris lying upon the shore; or such as have an owner, but unknowne to us, or (as we may adde, to make up the number compleat) such as whose owner we know. Where the true owner is knowne, speedy restitution must follow; otherwise the detention is in the next doore to theft; Where the commodity found hath no owner, it justly falls to the right of the first finder; for both the place and the thing are masterlesse, (*adespota*) and common;

* Dom. Sot. de Jure & Justit. l. 5. q. 3. pag. 436.

offering themselves to the next comer : The onely difficulty is in those things which have an unknown owner : And certainly common justice and honesty suggests to us, that we may not seize on commodities of this kinde, as absolutely our own ; the casualty of their mis-laying doth not alter their propriety ; they are still his that lost them ; though out of his sight , yet not out of his right ; and even naturall Justice, would give every man his owne. The Lawes both Civill and Canon, and Municipall doe sufficiently guide our practise in many particular cases of this nature, and our Conscience must lead us to follow them : If they be quick commodities, as horses, sheep, kine, and the like, (which we call Waifes and Strayes) every one knowes they are to be publickly impounded, that upon search the owner may be the surer to find them ; and if
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he come not in, the sooner, to be openly cryed in severall markets, that the noise of his own neglected goods may come to his eare : and if, upon a continuing silence, they be put into the Custody of the Lord of the Manour, (who is most likely to be responsible) and he shall make use of them, before his year and day be expired, he shall not doe it without some mark of distinction, that yet the true owner may know, they are not challenged by the present possessour, as his owne, but lye open to the just claime of their true master.

But if they be dead commodities, as a jewell, a purse, or some ring of price, or the like, the finder may not presently smother up the propriety of it in his owne cofer ; his heart tells him that the meer accident of his finding it, cannot alienate the just right of it from the true owner ; he is therefore bound in conscience, in an
honest

honest sincerity to use all good means for the finding out of the right proprietary, whether by secret inquiry, or open publication: and if after due inquisition, no claime shall be made to it for the present, he shall reserve it in his hand in expectation of a just challenge: upon the assurance whereof (how late soever) he is bound to restore it to the proper owner: who, on the other side, shall faile in his duty of gratitude, if he returne not some meet acknowledgement of that good office, and fidelity: In all which mutuall carriages, we ought to be guided by those respects, which we could wish rendered to our selves in the like occasions. Mean while, in all the time of our custody, we are to looke upon those commodities as strangers; making account of such a potentiall right onely in them, as we are ready and desirous to resigne to the hands that purchased and lost them. On the

the contrary, no words can expresse the horrible cruelty and injustice that is wont to be done in this kinde, not onely on our shores, but in other nations also, upon the ship-wrecked goods both of strangers, and our own compatriots; whiles in stead of compassioning and relieving the losse, and miseryes of our distressed bretheren, every man is ready to run upon the spoile, and, as if it were from some plundered enemy, is eagerly busie in carrying away what riches soever come to hand, which they falsly, and injuriously terme *Gods Grace*, when as indeed it is no other than the Devils booty. This practise can passe for no other than a meere robbery, so much more haynous, as the condition of the mis-carried owner is more miserable: what a foule inhumanity is this, to persecute him whom God hath smitten; and upon no other quarrell to be cruell to our brother, than
because

because the Sea hath been mercilesse :
 Deare Countrymen, ye especially of
 the West, leave these abominable pil-
 lages to savage Nations, that know
 not God ; and, putting on the bow-
 els of tender compassion, lend your
 best succour rather for the rescue of
 poore wrecked soules, and safely pre-
 serving that small residue of their
 drowned freight, which you cannot
 imagine that the Sea hath therefore
 forborn to swallow, that you might.

CASE X.

*Whether I may lawfully buy those goods
 which I shall strongly suspect, or know
 to be stolen or plundered; or, if I have
 ignorantly bought such goods, whe-
 ther I may lawfully (after knowledge
 of their owner) keep them as mine.*

TO buy those goods which you
 know, or have just cause to su-
 spect

spect to be stolln or plundered, is no better th n to make your selfe accessory to the theft; if you doe it with an intention to possesse them as your owne; for what doe you else herein, but *ex-post-facto* partake with that thiefe, who stole them; and incourage him in his leud practices: since according to the old word; If there were no receivers, there would be no thieves. Neither will it serve the turn, that in the case of plunder, there may seeme a pretence of justice, in that this is pleaded perhaps to be done by some colour of authority; for certainly where there is not law, there can be no justice, whereof law is the onely rule: Whatever then is against an established law, in matter of right and possession, can be no other than unjust; Take heed therefore lest that heavy challenge of the Almighty be (upon this bargaine) charged upon you; Psal. 50. 18. *When thou sawest*

a thiefe, thou conſentedſt with him :
Theſe ſtoln waters may be ſweet in the mouth, but they will be poyſon in the maw, and like the water of a juſt jealousie, rottenneſſe to the belly : But if (as theſe ill-gotten goods are lightly cheap penny-worths) you buy them onely with an intention to gratifie the true owner, with an eaſie purchaſe of his owne, (which would perhaps elſe be unrecoverable) (whiles your profeſſion, it do it for no other end, takes off the ſcandall) I cannot but allow your act, and commend your charity.

But if, making uſe of that rule which Saint *Paul* gives for meat, in bargaining for any other commodities, you ſhall extend your liberty to whatſoever is ſold in the market, and ſhall in the exerciſe of that freedome upon a juſt and valuable conſideration ignorantly buy thoſe goods which you afterward heare, and know, to be

be anothers, the contract is on your part valid, and faultlesse, since your invincible want of knowledge acquits you from any guilt of consent; but withall, there is an after-game to be plaid by you: you are bound (upon just notice) to acquaint the true owner with the matter, and to profer your selfe ready to joyne with him in the prosecution of law, or justice upon the offender, and upon a meet satisfaction to tender him his own.

But if the theft be onely upon probability; and it be doubtfull whether the goods belong to the owner notified to you, your duty is to make diligent inquiry into the businesse; and if upon due inquisition, you finde too much likelihood of the theft, I dare not advise you (with some Casuists) to reverse the bargaine, and to returne the commodity to those false hands that purloyned it; but rather to call the probable owner, and with
him

him to appeale unto just authority; for a more full examination of the right, and an award answerable to justice: but if there appeare no good grounds for an impeachment, you may peaceably sit down in the possession, till further evidence may convince your judgement in the contrary.

RESO.

RESOLUTIONS.

The second Decade.

Cases of Life and Liberty.

CASE I.

Whether, and in what cases it may be lawfull for a man to take away the life of another.



How light a matter soever it may seeme to the world now long soaked in blood, a mans life is most precious; and may not (but upon the waightiest of all causes) be either taken, or given away. the great God hath

hath reserved to himself this prerogative, to be the onely absolute Lord of it; neither can any creature have power to command it, but those onely to whom he hath committed it by speciall deputation; nor they neither, by any independent or illimited authority; but according as it is regulated by just lawes: to call for a mans life meerly out of will, is no other than a Turkish tyranny.

Now the same God that hath ordained Sovereign powers to judge of, and protect the life of others, hath given weighty charge to every man to tender and manage his owne: which bindes him to use all just meanes for his owne preservation; although it should be the necessitated destruction of another.

Let us see therefore how far, and in what cases, man, that is alwayes appointed to be master of his owne life, may be also master of another mans.

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That publique justice may take away the life of hainous malefactors, is sufficiently knowne, to be not lawfull onely, but required; and indeed so necessary, that without it there were no living at all amongst men.

That in a just warre the life of an open enemy may be taken away, is no lesse evident; the onely question is of private men in their owne cases.

And here we need not doubt to say that even a private man, being mortally assaulted, may in his owne defence lawfully kill another; I suppose the assault mortall, when both the weapon is deadly, and the fury of the assailant threatens death; as for some sleight and suddaine passages of a switch, or a cane, they come not under this consideration, although those small affronts offered to eminent persons prove oftentimes to be quarrells no lesse than mortall. But

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even in these assaults, (except the violence be so too impetuous, that it will admit of neither parle nor pause) there ought to be (so much as may consist with our necessary safety) a tender regard and indeavour to avoid the spilling of bloud; but if neither perswasion, nor the shifting (what we may) our station, can abate any thing of the rage of the assailer, death must: Yea, if not my brother onely, but my father, or my sonne should in this forcible manner set upon mee, howsoever I should hazard the award of some blowes, and with teares beg a forbearance, yet, if there would bee no remedy, nature must pardon mee; no man can bee so neare mee as my selfe.

I cannot therefore subscribe to the counsell of * *Leonardus Lessius* (abetting some ancieut Casuists, and pre-

* *Lef. de jur. &c. l. 2. c. 9. dubit. 8. Ex Antonio & Sylvestr. &c.*

tended to be countenanced by some Fathers) that it were meet for Clericall and Religious persons rather to suffer death, than to kill a murtherer: since no reason can be shewed, why their life should not bee as deare to them as others; or why they should be exempted from the common law of nature; or why their sacred hands should be more stained with the foule blood of a wicked man-slayer, justly shed, than any others. I am sure *Phineas* thought not so; nor *Samuel* after him; and (which is most of all) that the honor and priviledges of the Sonnes of *Levi* were both procured, and seoffed on them upon an injoynd blood-shed.

* Onely here is the favour and mercy of that learned Casuist, that Clerks and Votaries are not alwayes bound rather to dye, than kill: for, saith he, if such religious persons should bethink

* Ibid. parag. ult.

himselfe, that he is in a deadly sinne, and should thereupon feare that he should be damned, if he were killed in that wofull and desperate estate; hee were then bound by all meanes to defend himselfe, and to preferre the safety of his owne soule, before the life of another: As if nothing but the feare of damnation could warrant a man for his owne safeguard, as if nothing but the danger of hell could authorize an holy person to be his owne guardian; as if the best of lives were so cheap and worthlesse, that they might be given away for nothing, whereas contrarily *Precious in the sight of the Lord is the death of all his Saints*, Psalm. 116. But in such a case (according to the opinion of this great * Casuist) charity to our selves doth not more arme and enforce our hand, than charity to our neighbour holds it, and bindes it up: We may

* Less. *ibid.*

not

not kill, lest the man-slayer, dying in the attempt of this murder, should everlastingly perish : Surely, I cannot but admire this unreasonable mercy in a father of the Society ; Where was this consideration when so many thousands of innocent persons were doomed to be blown up in a state of impenitence ; whose unrepented heresie must needs have sent them up instantly to their hell ?

By this reason, a malefactor, if he be obdured in his sinne, and professeth to bee remorselesse, may not feelee the stroke of Justice. Shortly then, if a man will needes be wicked to my destruction, the evill is his owne ; let him beare his owne guilt, let me looke to my owne indemnity.

The case is yet more difficult where the attempt is not upon my person, but my goods ; if a man will be offering to robbe my house, or to take my purse, what may I doe in this

case? Surely, neither charity, nor justice can dissuade me from resisting; the lawes of God and man will allow me to defend my owne; and if in this resistance the Thief, or Burglayer miscarry, his blood will be upon his owne head: although in the meane time, charity forbids that this slaughter should be first in my intention; which is primarily bent upon my owne safety, and the vindication of my owne just propriety: the blood that followes is but the unwilling attendant of my defence: of the shedding whereof, God is so tender, that he ordained it onely to be inoffensively done in a nightly robbery; *Exodus 22.2.* where the purpose of the thiefe is likely to bee more murtherous, and the act more incapable of restitution.

What then if the thiefe, after his robbery done, ceasing any further danger of violence, shall betake himselfe

selfe to his heeles, and run away with my money? In such a case, if the summe be so considerable, as that it much imports my estate, how ever our municipall lawes may censure it (with which, of old, even as killing (* *se defendendo*) was no lesse than felony of death) my Conscience should not strike me if I pursue him with all might, and in hot chase so strike him, as that by this meanes I disable him from a further escape, for the recovery of my owne; and if hereupon his death shall follow, how ever I should passe with men, God and my owne heart would acquit mee.

Neither doubt I to say, the like may be done upon a forcible attempt of the violation of the Chastity of either sexe: A case long agoe adjudged by the doome of nature it selfe in *Marius* the Generall of the Roman

* Dalton. p. 244.

army (as * *Cicero* tells us) clearely acquitting a young man for killing a Colonel that would have forced him in this kind.

But I may not assent to † *Dominicus Bannez*, *Petrus Navarrus*, and *Cajetan*, (though grave Authors) who hold, that if a man goe about upon false and deadly criminations to suborne witnesses against mee, to accuse me to a corrupted Judge, with a purpose to take away my life, in a colour of justice, if I have no other way to avoid the malice, I may lawfully kill him: It were a wofull and dangerous case, if every man might be allowed to carve himselfe of justice; Meere accusations are no convictions; How know I what God may work for me on the Bench, or at the Barre? what evidence hee may raise to cleare mee? what confusion, or contraction hee

* Orat. pro Mil. † Binn q. 64.3.7.dub.9: Nav. l.2. c.3. Less. l.2. de Jure, &c. c.9.dub.8.

may cause in the mouthes of the hired witnesses? what change he may work in the Judge; what interposition of higher powers; There is a providence in this case to be relyed upon; which can and will bring about his owne holy purposes, without our presumptuous, and unwarrantable undertakings.

CASE II.

Whether may I lawfully make use of a Duell for the deciding of my right, or the vindication of my honour?

I Have long agoe spent my opinion upon this point, in a large epistolar discourse, which I finde no reason to alter: thither I might referre you to spare my labour; but lest perhaps that should not be at hand; shortly thus:

The sword in a private hand was

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never ordained to be a decider of any controversies, save this one, whether of the two is the better Fencer; nor yet that alwayes, since Eccles. 9. 11. *The race is not to the swift, nor the bat-taile to the strong*; as Solomon hath observed: It can be no better therefore, than a meere tempting of God, as * *Rodriguez* justly censures it, to put our selves, or our cause upon so unwarranted a tryall: I finde but two practises of it in the Records of Scripture, the one, that famous challenge of *Goliath*, which that proud *Philistin* had not made, if he had not presumed of his Giantly strength, and stature, so utterly unmatchable by all *Israel*, 1 *Sam.* 17. 24. that the whole host was ready to give back upon his appearance; he knew the advantage so palpable, that none would dare to undertake the quarrell; and had still gone on to triumph over that trem-

* *Rodrig. Sum. cas. Tom. 1. cap. 73.*

bling army, had not Gods unexpected champion, by divine instinct taken up the monster, and vanquish't him, leaving all but his head, to bedung that earth, which had lately shaken at his terrour.

The other was in that mortall quarrell betwixt *Jash* and *Abner*, on the behalte of their two Masters, *David* and *Ishboseth*; 2 Sam. 2. 14. wherein *Abner* invites his rivall in honor, to a Tragical play, (as he termes it) a monomachie of twelve single combatants on either parr; which was so acted, that no man went victor away from that bloody Theater; Only it is observable, that in both these conflicts still the challengers had the worst.

In imitation of which latter, I cannot allow that which I find frequently done in the managing of publique hostility; that some confident Cavalier out of meere bravery of spirit craves

craves leave to put himselfe forth before both Armies, and (as in way of preface to an ensuing battaile) bids defiance to any Antagonist; An act of more valor than judgement; whereof the undertaking is void of warrant; and the issue (lightly) of successe: whiles it pleaseth God commonly to punish presumption with a foyle; and the ominous miscarriage of one, proves a sad discouragement to many.

And if single fortitude be not triable this way, much lesse Justice in causes litigious; to make the sword arbiter of such differences, were no better than to revive the old Ordalian triall used by our Heathen Ancestors: Sith God hath no more ordained, nor promised to blesse the one than the other; And reason it selfe tells us, in how ill a condition that righteous cause is, which must be carried by the sharper weapon,

pon, the stronger arme, the skilfuller fencer.

Now whereas there are two acts, as introductions into the field, a Challenge, and an Acceptation; both of them have their guilt, but the former so much more, as it hath in it more provocation to evill.

I cannot therefore but wonder at, and cry downe the opinion of *Bannez*, and *Cajetan*, that a man slandered by an unjust accuser, may justly challenge him the field, and vindicate himselfe by the sword; A Doctrine, which if it were allowed and accordingly practised, besides that it would destroy the course of justice, and wrest revenge out of the hands of the Almighty, were enough to make the world an *Aceldama*; For who would not be his owne Judge for the Accusation; and his owne Executioner for the revenge?

There may yet seeme more innocence

cence in the Acceptation ; which makes shew of a meere passive nature, and appears to be extorted by the insolence of a provoking adversary, whose pressures are wont to receive such construction, as that the challenged party refusing, upon what ground soever, is in the vulgar opinion proclaimed for base and recreant ; and I must needs confesse, the irritation diminisheth the offence ; but withall, however the Spanish and Italian Casuists (whose Nations are wont to stand a little too highly upon the points of a mis called honour) are wont to passe faire interpretations of the matter, I cannot but find it deeply guilty also : for what is this other, than a consent to sin by engaging in blood ; which by a man wise and conscionable might be turned off with a just contempt, without imputation of cowardise : since the plea of conscience is able to beare downe
the

the vaine fancies of idle sword-men : or, if that will not be taken, the false blurres that are cast upon a worthy mans reputation by vulgar breath, deserve no entertainment but scorne ; or lastly, other means lie open to both parts for the prooffe of a questioned valour, which in a lawfull way the challenged is ready to embrace ; he walks not unprovided about the businesse of his calling, if he be fairely set upon, on equall termes, he shall make no doubt to defend himselfe : But to make a formall businesse of a quarrell, on either part, and to agree upon a bargaine of blood-shedding, is wicked and damnable ; and though both should come fairely off, yet the very intention to kill, is murther.

This case is so cleare, that the Counsell of * *Trent* hath thought fit to denounce heavy sentences, and in-

* Conc. Tr. Sess. 25. Rodriguez. Tom. 1. c. 73. de duello.

flie sharp censures upon Emperours, Kings, States, and Potentates, that shall give allowance to Duels within their Dominions; pronouncing them *ipso jure* excommunicate; and depriving them of those towns, cities, lands, (if held of the Church) where such unlawfull acts are made: And that those who either act, or patronize, and by their presence assist, countenance, or abett such combats, shall incurre the sentence of excommunication, the losse of all their goods, and perpetuall infamy; and if they dye in such quarrell, shall, as selfe-murtherers, be debarred the priviledge of Christian buriall.

Briefly therefore, neither your justice, nor your honour may depend upon the point of private swords, and if there can be no other remedy, you must rather suffer in either, than hazard your soule.

CASE

CASE III.

Whether may it be lawfull, in case of extremity, to procure the abortion of the child, for the preservation of the mother?

IFear want of true judgement renders too many of the weaker sexe grossely culpable in matter of willing abortion; whiles being not well principled either in nature, or grace, they think it not unlawfull, or at least, venially so, whether out of the feare of painefull childe-birth, or for the avoidance of too great a charge, to prevent the fulnesse of their conceptions; and therefore, either by over vehement motion, or unwholsome medicine, are not unwilling to fore-stall nature, and to free themselves early of that which might in time prove their burden: Wherein they little know how highly they

they offend the Majesty of God in destroying his potentiall creature, and how heavy weight of guilt they lay upon their soules, whiles they in-deavour to give an undue ease to their bodies.

Your question supposes an extremity; and surely such it had need to be, that may warrant the intention of such an event.

For the deciding whereof, our Casuists are wont to distinguish double; both of the state of the conception, and of the nature of the receipt: In the former, they consider of the Conception, either as it is before it receive life, or after that it is animated: Before it receive life, they are wont to determine, that howsoever it were no lesse than mortall sin, in a Physitian to prescribe a medicinall receipt to cause abortion, for the hiding of a sinne, or any outward secular occasion; yet for the preservation

tion of the life of the mother, in an extreme danger, (I say, before animation) it might be lawfull: But after life once received, it were an hainous sin to administer any such mortall remedy. The latter Casuists are better advised; and justly hold that to give any such expelling or destructive medicine, with a direct intention to work an abortment, (whether before or after animation) is utterly unlawfull, and highly sinfull: And with them I cannot but concur in opinion; For, after conception we know that naturally followes animation, there is only the time that makes the difference; which in this case is not so considerable, as to take off a sine: That of * *Tertullian* comes home to the point which both *Covarruvias* and † *Lessius* urge to this purpose: *Homicidii festinatio est prohibere nasci*; It is but an hastening of mur-

* *Tertul.* in *Apol.* c. 9. † *Less.* l. 2. c. 9. du. 10.

der to hinder that which would bee born; *Homo est qui futurus est* ; It is a man that would be so, &c.

Upon this ground we know that in a further degree of remotenesse, a voluntary selfe pollution hath ever beene held to have so much guilt in it, as that *Angelus Politianus* reports it as the high praise of * *Michael Verrius*, that he would rather dye, than yeild to it: how much more when there is a further progresse made towards the perfection of humane life?

And if you tell me that the life of the mother might thus be preserved, whereas otherwise both she and all the possibilities of further conceptions are utterly lost; I must answer you with that sure and universall rule of the Apostle, That *wee may not doe evill that good may come thereon*, Rom. 3.8.

* *Ne se pollueret, magis ipse mori*. Ex Politiano Gerard. Voss. de orig. & progres. Idol. l. 3. c. 18.

The second consideration is of the nature of the receipt, and the intention of the prescriber; There are prescripts that may, in, and of themselves tend towards cure, and may have ordinarily such an effect; but yet being used and applyed for the mothers remedy, may prove the losse of the conception, being yet inanimate; these if they be given with no other intention than the preservation of the mothers life, may bee capable of excuse; for that the inconvenience (or mischief rather) which followed upon the receipts was accidentall, and utterly against the minde, and hopes of him that advised them.

But if the conception bee once formed, and animated, the question will be so much more difficult, as the proceedings of nature are more forward: Whereupon it is, that the Septuagint in their Translation (as *Lefius* well observes) have rendered
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that Mosaicall law (in *Exod.* 21.) concerning abortions, in these termes. *If a man strike a woman that is with child, and shee make an abortion, if the child were formed, he shall give his life for the life of the child; if it were not formed, he shall be punished with a pecuniary mulct to her husband**: applying that to the issue, which the Vulgar Latin understands of the mother; and making the supposition to be of a formation and life; which the Latine more agreeably to the Originall, makes to be *Death*; and our English, with † *Castalion* expresses by *Mischief*: but whether the Mischief be meant of the death of the mother, or of the late-living issue, the Scripture hath not declared: * *Cornelius à Lapide* taking it expressly of the mothers

* *Exod.* 21. 22. The Septuagint seem to have taken מות (death) for מיתה a diminutive of מת a man: as *Cornel. à Lapid.* probably guesses
 † *Castal.* *Si perniciēs non fuerit*: Ours, if no mischief follow. * *Cornel. à Lap.* in *Exod.* 21.

death, yet drawes; the judgement out, in an equall length to the death of the childe, once animated; making no difference of the guilt; since the infants soule is of no lesse worth, than hers that beares him.

In this case of the conception animated, I find the Casuists much divided; Whiles some more tender than their fellowes, will not allow in the utmost extremity of a dying mother, a medicine that may be directly curative to be given her, if it should be with any apparent danger of the childe; in case that the child may be probably drawne forth alive; which they doe upon this false and bloudily uncharitable ground, * that the child dying without Baptisme, is liable to eternall damnation, which wofull danger therefore the mother ought

* Vel. ut alii, *Quorum anima certissime in limbum descendunt sine Baptismo.* Mart. Alphons. Viv. Explan. Bullæ de abort.

to prevent, though with the certaine hazard of her own life: but the foundation of this judgement being unsound, (since to doome the children of believing Parents inevitably to hell for the want of that, which they are not possibly capable to receive, is too cruell and horrible) the structure must needs totter. These men whiles they professe themselves too carefull of the soule of the childe (which yet may perhaps be safer than their owne) seeme to bee somewhat too hard-hearted to the body of the mother.

* Others more probably hold, that if the case be utterly desperate; and it bee certaine that both mother and childe must undoubtedly perish if some speedy remedy be not had; it may then be lawfull to make use of such receipts as may possibly give some hopes to save the mother,

* *Rodr. Sum. To. 1. c. 5. de Abort.*

though

though not without some perill of the child.

But all this while, the intentions, and indeavours must be no other than preservatory ; however it pleaseth God to order the events : Shortly, no man that purposely procureth an abortion, as such, can wash his hands from blood ; No woman that wilfully acts, or suffers it, (however the secrecy may exempt her from the danger of humane lawes) can thinke to avoid those judgments of the righteous God , which he hath charged upon murderers.

I cannot here therefore forbear to give the world notice of the impious indulgence of a late Pope in this kind; *Sixtus quintus*, who in our time sat in the See of *Rome* , finding the horrible effects of that liberty, which too many both secular and religious persons tooke to themselves in this matter of abortion ; in a just detestation of that

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damnable practice, thought meet in much fervour of spirit to set forth his *Bulla Crucjata*; than which there was never a more zealous piece published to the world; wherein that Pope pronounces all those, which have any hand in the acting or procuring of this wicked fact, of the ejecting of conceptions, whether animate or inanimate, formed, or informed, by potions, or medicaments, or any other meanes whatsoever, to have incurred both the crime and punishment of man slaughter: charging due execution to be done upon such persons accordingly: And withall in a direfull manner excommunicates them, and sends them to hell, (without repentance) reserving the absolution solely to himselfe and his successors.

Now comes a late * successor of his, *Gregory 14*; who finding the

Vid Rodrig. ubi supra.

sentence

sentence too unreasonably hard for his petulant, and thriftie Italians, and, indeed, for all loose persons of both sexes; mitigates the matter; and, as a Spanish Casuist expresses it truly, in the very first yeare of his Pontificate in a certaine Constitution of his, dated at Rome, the last day of May, 1591. *delevit censuras, quas Sixtus V. imposuerat contra facientes, procurantes, &c.* abolisht and took off those heavy censures, which * *Sixtus* had imposed; and reduced the terrible punishments by him ordained to be inflicted unto a poore bare irregularity; and determines, that any Confessor, allowed by the Ordinary, may absolve from this sin of procured abortion: By the sleightnesse of the censure, in effect, animating the sin: An act well becomming

* *Constit. Greg. 14. Qua dicit quod quivis Confessor approbatus ab Ordinario potest absolvere à peccato abortiva. Ibid.*

the mother of Fornications : After all which Pandariſme, let all good Chriſtians know, and reſolve the crime to be no leſſe than damnable.

But withall, let me adviſe you, (with * *Martinus Vivaldus*) that what I have herein written againſt the procurers of abortions, may not be extended to the practice of thoſe diſcreet Phyſitians, and Chirurgeans, who being called to for their aide in difficult and hopeleſſe child-births, preſcribe to the woman in travaile ſuch receipts, as may be like to haſten her delivery, (whether the childe be alive or dead :) forasmuch as the conception is now at the full maturity; and the indeavour of theſe Artiſts is not to force an abortement, but to bring forward a naturall birth, to the preſervation of the mother, or the childe, or both.

* Mart. Alphons. Vivald. expli. Bull. Cruc.

CASE IV.

Whether a man adjudged to perpetuall imprisonment, or death, may in conscience indeavour, and practise an escape.

WHat the Civill or Common Lawes have in this case determined for the publique good, comes not within the compasse of our disquisition: Let the Guardians, and Ministers of those Lawes looke carefully to the just execution of them accordingly: The question is onely of the law of private conscience; how farre that will allow a man to goe in case of a sentence passed upon him, whether of death or bonds.

And first of all; if such sentence be unjustly passed upon an innocent, no man can doubt, but that hee may most lawfully, by all just meanes, worke his owne freedome: But if

an offender, what may he doe? The common opinion of Casuists is peremptory; * That he that is kept in prison for any offence wherupon may follow death, or losse of limb, whether the crime be publique or private, may lawfully flee from his imprisonment, and may for that purpose use those helps of filing, or mining, which conduce to this purpose: Their ground is, that universall rule, and instinct of selfe-preservation, which is naturall to every creature; much more eminent in man, who is furnished with better faculties than the rest, for the working of his own indemnity: Whereto is added that main consideration of *Aquinas*; That no man is bound to kill himselfe, but onely doomed to suffer death; not therefore bound to doe that upon which death will inevitably follow, which

* *Qui retinetur in carcere propter aliquod delictum, &c.*
Rodrig. Sum. cap. 40.

is to wait in prison for the stroak, if he may avoid it; it is enough that he patiently submits to what the law forces upon him, though he doe not cooperate to his owne destruction: his sentence abridges him of power, not of will to depart: Whereupon they have gone so far, as to hold it in point of conscience not unlawfull for the friends of the imprisoned, to conveigh unto him files, and cords, or other instruments usefull for their escape: But herein some better-advised Doctors have justly dissented from them; as those, whose Judgment hath not beene more favourable to malefactors, than dangerous and prejudiciall to the Common-wealth: for how safe soever this might seeme in lighter trespasses, yet if this might be allowed, as in conscience lawfull to be done to the rescue of murderers, traytors, or such other flagitious villains, what infinite mischief might

it produce ? and what were this other than to invite men to be accessory to those crimes, which the law in a due way intends to punish ? Certainly, by how much a more laudable act of Justice it is, to free the society of men from such wicked miscreants, by so much more sinfull and odious an office it were, to use these sinister means for their exemption from the due course of Justice ; But howsoever for another man to yield such unlawfull aide, is no better than a foule affront of publique Justice, and enwrappes the agent in a partnership of crime ; yet the law of nature puts this liberty upon the restrained party himselfe, both to wish and indeavour his owne deliverance : Although not so ; but that if the prisoner have ingaged himselfe by solemne promise, and oath to his keeper, not to depart out of his custody ; honesty must prevaile above nature ; and he ought rather
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to dye, than violate that bond which is stronger than his irons: Very Heathens have by their example taught us this lesson; to regard our fidelity, more than our life: Thus it should be, and is, with those that are truly Christian and ingenuous, under what ever capacity; but in the case of gracelesse and felonious persons, Goalers have reason to looke to their bolts and locks; knowing (according to the old rule of wise *Thales*) that he who hath not stuck at one villany, will easily swallow another; perjury will easily downe with him, that hath made no bones of murder.

But where the case is entire, no man can blame a captive if he would bee free; and if hee may untie the knot of a cord wherewith he was bound; why may he not unrivet, or grate an iron wherewith he is fettered? for so much as hee is not bound to yeild,

or continue a conſent to his owne du-
rance: This charge lies upon the kee-
per, not the priſoner.

A man that is condemned to periſh
by famine, yet if he can come by ſu-
ſtenance may receive, and eat it: That
Athenian malefactor, in * *Valerius*
Maximus, ſentenced to die by hunger,
was never found fault with, that he
maintained himſelf in his dungeon by
the breſts of his good-natur'd daugh-
ter.

And if a man be condemned to be
devoured by a Lion, there can be no
reaſon why he ſhould not (what he
may) reſiſt that furious beaſt, and
ſave his owne life.

But when I ſee our Romiſh Ca-
ſuiſts ſo zealouſly tender in the caſe
of Religious perſons, as that they
will not allow them, upon a juſt im-
priſonment, to ſtirre out of thoſe
grates, where to they are confined, by

* Val Max l. 5. Dom. Sor. de Jure, & c. l. 5 q. 5

the

the doom of their Prelates; And when I see the brave resolutions of holy Martyrs, that even when the doores were set open, would not flee from a threatned death, I cannot but conclude, that whatsoever nature suggests to a man, to work for his owne life or liberty, when it is forfeited to Justice, yet that it is meet and commendable in a true penitent, when he findes the doome of death or perpetuall durance justly passed upon him, humbly to submit to the sentence; and not entertaine the motions and meanes of a projected evasiō: but meekly to stoop unto lawfull authority, and to wait upon the issue whether of Justice, or Mercy: and at the vvorst, to say vvith the Poet, *Merni, nec deprecor.*

CASE V.

Whether and how far a man may be urged to an Oath.

AN Oath, as it is a ſacred thing, ſo it muſt bee no otherwiſe than holily uſed; whether on the part of the giver, or taker; and therefore may neither be raſhly uttered, nor unduly tendered upon ſleight, or unwarrantable occaſions: We have not to doe here with a promiſſory oath, the obligation whereof is for another inquiry; It is the aſſertory oath that is now under our hand; which the great, God by whom we ſwear, hath ordained to be an end of controverſies; *At the mouth of two or three witneſſes ſhall the matter be eſtabliſhed, Deuter. 19. 15. and 17. 6.* As for ſecular Titles of *mine*, or *thine*; the propriety of goods, or lands, next after written evidences, teſtimonies upon Oath muſt

must needs be held most fitly decisive the only scruples are wont to be made in causes criminall.

1. Wherein surely we may lay this undoubted ground, that no man is to be proceeded against without an accuser, and that accusation must be made good by lawfull witnesses: A Judge may not cast any man upon the plea of his owne ey-sight: should this liberry be granted, Innocence might suffer, and Malice triumph: Neither may any man be condemned upon hear-say; which how commonly false it is, daily experience sufficiently evinceth.

On the other side, men are apt enough to connive at each others wickednesse; and every man is loath to be an Informer, whether out of the envy of the office, or out of the conscience of his owne obnoxiousnesse.

And yet thirdly, it is requisite that care should bee taken, and all due means

meanes used by authority¹, that the world may not be over-run with wickednesse; but that vice may be found out, repressed, punished.

There cannot, fourthly, be devised a fairer, and more probable course for the effecting hereof, than by the discovery upon oaths of the Officers and Jurors in Assizes, and Sessions; and of Churchwardens, and Sidemen in Visitations.

The ground of all presentments to, or by these men must be either their owne knowledge, or publique fame, or an avowed information. Any of these gives a lawful hint to the Judge, whether Ecclesiasticall or Civill, to take full triall of the cause and person.

Knowledge is alwayes certain, but fame is often a lyar; and therefore every idle rumour must not be straight taken upon trust; the inconvenience and injury whereof I have often
seen :

scene; when some malicious person, desiring to doe a despight to an innocent Neighbour, raises a causelesse slander against him, whispers it to some dis-affected Gossips, this flies to the eare of an Apparitor; hee straight runs to the Office, and suggests a publique fame; the honest man is called into the Court; his reputation is blurred in being but summoned; and after all his trouble and disgrace hath his amends in his own hands.

The rule of some Casuists, that ten tongues make a fame, is groundlesse and insufficient; neither is the number so much to be regarded as the quality of the persons.

If a whole pack of debauched companions shall conspire to staine the good name of an innocent (as we have too often knowne) it were a shamefull injustice to allow them the Authors of a fame: the more judici-

ous

ous Doctors have defined a publique fame by the voice of the greater part of that Community, wherein it is spread, whether Towne, Parish, City: and therein of those that are discreet, honest, well-behaved. We are wont to say, Where there is much smoake, there is likely some fire: an universall report from such mouthes therefore, may well give occasion to a further inquiry. If any mans zeale against vice will make it a matter of instance, the case is cleare, and the proceeding unquestionable; But if it be matter of meere office, the carriage of the pro-
cesse may bee liable to doubt; Herein it is meet such course be taken, as that neither a notorious evill may be smothered, nor yet innocence injured: To which purpose the most confident reporter may be called upon (because fame hath too many tongues to speak at once) to lay forth the grounds of that his whispered crimination; and
if

if the Circumstances appeare pregnant, and the Suspitions strong, I see not why the Ecclesiasticall Judge (for with him onely in this case I professe to meddle) may not convent the person accused, lay before him the crime which is secretly charged upon him; and either upon his ingenuous confession, enjoin him such satisfaction to the scandalized Corgregation as may be most fit, or upon his denyall urge him to cleare himselfe by lawfull witnesses, of the crime objected; Or why he may not, if hee see further cause, appoint a discreet and able prosecutor to follow the business in a legall way; upon whom the accused, if he be found guiltless, may right himselfe.

But all this while, I finde no just place for an oath to be administred to a man for his owne accusation; which certainly, is altogether both illegall and unreasonable; If a man
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will voluntarily offer to cleare himſelfe by an Oath, out of the aſſuredneſſe of his owne innocence, he may be allowed to be heard, but this may neither be preſſed to be done, nor yet concluſive, when it is done; for both every man is apt to be partiall in his owne caſe, and he that durſt aſt a foule ſin will dare to face it. It was ever therefore lawfull (even when Eccleſiaſtiſtical Inquiſitions were at the higheſt) for a man to reſuſe anſwer to ſuch queſtions upon oath, or otherwiſe, which tended to his owne impeachment; as unjuſtly, and unwarrantably propoſed: and it was but a young determination of * *Aquinas*, when he was onely a Batchelour, in the Generall Chapter at *Paris*, contradicted by all the ancient Graduates there, that when the crime is notorious, and the authour unknowne, the

* *Sylveſtr. V. Correſt. Dom. Sor. l. 5. de Jure, q. 4*
Leſſ. de Judice l. 2. c. 29.

secret offender is bound upon his Ordinaries charge and command, to reveale himselfe.

Even the Spanish Casuists, the great favourers and abettors of the Inquisition, teach that the Judge may not of himselfe begin an inquiry, but must be led by something which may open a way to his search, and as it were force him to his proceeding, *ex officio*, as publique notice, infamie, common suspicion, complaint; otherwise, the whole proceffe is void in law; although herein some of them goe too far in favour of their great *Diana*, that where the crime is known, and the author unknowne, the Judge may in a generality inquire of him that did it, and if he have any private information (though without any publique fame foregoing) he may in some cases, raise a particular inquisition upon the party, and call him to defend himselfe; which course certainly,

certainly, gives too much advantage to private malice; and opens too much way to the wronging of Innocence. The faire way of proceedings in all Chriſtian Judicatures, ſhould be, by Accuſer, Witneſſe, and Judge, in diſtinct perſons openly knowne; the Accuſer complains, the Witneſſe evinceth, the Judge ſentences: The one may not be the other; much leſſe all three: Were that to be allowed, who could be innocent?

When a witneſſe then is called before a competent Judge, to give evidence upon oath concerning a third perſon, in a matter cognoſcible by that Jurisdiction, he is bound to ſwear *in truth, in judgement, and in righteouſneſſe*, Jer. 4. 2. as for his owne concernments, he muſt referre himſelf to the teſtimonies and oathes of others.

CASE VI.

Whether a Judge may upon allegations, proofes, and evidences of others, condemn a man to death, whom he himself certainly knows to be innocent.

THE question hath undergone much agitation; The streame of all ancient Divines, and Casuists runs upon the affirmative; their ground is, that the Judge, as he is a publique person, so in the seat of Judicature, he must exercise a publique authority; and therefore waving his private knowledge and interest, must sentence according to the allegations and proofes brought before him; since he is a Judge of the cause, not of the law; whereof he is to be the servant, not the master: There he sits not to speake his owne judgement, but to be the mouth of the law, and the law commands him to
judge

judge according to the evidence ; the evidence therefore being cleare and convictive, the doome can be no other than condemnatory.

For my part, I can more marvell at their judgement herein , than approve it ; professing for the negative, with some fewer and latter Authors, upon these sure grounds.

It is an evident and undeniable law of God which must be the rule of all Judges ; *The innocent and the righteous slay thou not*, *Exod. 23. 7.* This is a Law neither to be avoided, nor dispensed with : Accusations and false witnesses cannot make a man other than innocent ; they may make him to seeme so ; in so much as those that know not the cause exactly, may perhaps be mis-led to condemne him in their judgments : But to the Judge, whose eyes were witnesses of the parties innocence, all the evidence in the world cannot make him other than
guilt-

guiltlesse; so as that Judge shall be guilty of blood, in slaying the innocent, and righteous.

Secondly, the law of judging according to allegations and proofs is a good generall direction in the common course of proceedings; but there are cases wherein this law must vaile to an higher, which is the law of Conscience: Woe be to that man who shall tye himselfe so close to the letter of the law, as to make shipwrack of conscience; And that bird in his bosome will tell him, that if upon what ever pretences, he shall willingly condemne an innocent, he is no better than a murtherer.

Thirdly, it is not the bare letter of the law that wise men should stand upon, but the drift and intention of the law; of that, we may in some sense say as the Apostle did of an higher law, *The letter killeth*. Now every reasonable man knowes that the
intention

intention of the law, is to ſave and protect the innocent; to puniſh onely the guilty: The Judge therefore ſhall be a perverter of law, if, contrary to his knowledge, he ſhall follow the letter againſt the intention, in condemning an Innocent.

Let no man now tell me, that it is the law that condemnes the man, and not the Judge; This excuſe will not ſerve before the Tribunall of heaven; The law hath no tongue; It is the Judge that is *lex loquens*; If he then ſhall pronounce that ſentence which his owne heart tells him is unjuſt and cruell, what is he but an officious miniſter of injuſtice? But, indeed, what law ever ſaid, Thou ſhalt kill that man whom thou knoweſt innocent, if falſe witneſſe will ſwear him guilty? This is but a falſe gloſſe ſet upon a true text, to countenance a man in being an inſtrument of evill.

What then is in this caſe to be done?

done? Surely, as I durst not acquit that Judge, who under what ever colour of law should cast away a known Innocent, so I durst not advise against plaine evidences and flat dispositions, upon private knowledge, that man to be openly pronounced guiltlesse; and thereby discharged; for as the one is a grosse violation of justice; so were the other a publique affront to the law; and of dangerous consequence to the weale-publique: Certainly, it could not but be extreamely unsafe, that such a gappe should bee opened to the liberty of judgement, that a private brest should be opposed (with an apparent prevalence) against publique convictions: our Casuists have beaten their braines to finde out some such evasions as might save the innocent from death, and the Judge from blood-guiltinesse: Herein therefore they advise the Judge to use some secret meanes to stop the accusation,

or indictment; (a courſe that might be as prejudiciall to juſtice, as a falſe ſentence) to liſt the witneſſes apart, as in *Suſanna's* caſe, and by many ſubtile interrogations of the circumſtances to finde their variance or contradiction. If that prevaile not, *Cajetan* goes ſo farre, as to determine it meet (which how it might ſtand with their law, he knowes, with ours it would not) that the Judge ſhould be fore all the people give his oath, that hee knowes the party guiltleſſe; as whom he himſelfe ſaw at that very houre in a place far diſtant from that, wherein the fact is pretended to bee done: Yea* *Dominicus à Soto* could be content (if it might be done without ſcandall) that the priſoner might ſecretly be ſuffered to ſlip out of the gaole, and ſave himſelfe by flight. Others think it the beſt way, that the Judge ſhould put off the cauſe to a ſu-

* Dom. à Sot. de Jure, &c. l. 5. qu. 4.

perious Bench; and that himsefe should (laying aside his scarlet) come to the Bar, and as a witnesse avow upon oath the innocence of the party, and the falsity of the accusation: Or lastly, if he should out of malice, or some other sinister ends (as of the forfeiture of some rich estate) be pressed by higher powers to passe the sentence on his own Bench, that he ought to lay downe his Commission, and to abdicate that power he hath, rather than to suffer it forced to a willing injustice.

And truly were the case mine, after all faire and lawfull indeavours to justifie the innocent, and to avoid the sentence, I should most willingly yeild to this last resolution: Yea, rather my selfe to undergoe the sentence of death, than to pronounce it on the knowne-guiltlesse; hating the poore pusillanimity of *Dominicus à*

Soto *, that paſſes a *nimis creditu rigidum*, upon ſo juſt a determination ; and is ſo weakly tender of the Judges indemnity, that he will by no means heare of his wilfull deſerting of his office on ſo capitall an occaſion.

In the main cauſe of life and death, I cannot but allow and commend the judgement of *Leonardus Leſſius* ; but when the queſtion is of matters civill, or leſſe criminall, † I cannot but wonder at his flying off ; in theſe where in the buſineſſe is but pecuniary, or baniſhment, or loſſe of an office, he holds it lawfull for the Judge, (after he hath uſed all meanes to diſcover the falſeneſſe of the proofes, and to hinder the proceedings, if thus hee prevailes not) to paſſe ſentence upon thoſe allegations and probations, which himſelfe knowes to be unjuſt.

* *Etenim quod homo, qui officio ſuo vivit, debeat tantam ſacturam facere, durum creditu eſt.* Dom. Sor. ubi ſ. p. 2. † In cauſis civilibus et minus criminalibus

The reasons pretended are as poor as the opinion; * For, saith hee, the Common-wealth hath authority to dispose of the estates of the Subjects, and to translate them from one man to another, as may be found most availing to the publique good; and here there appears just cause so to doe, lest the forme of publique judgments should be perverted, not without great scandall to the people; neither is there any way possible to help this particular mans inconvenience and losse; therefore the Common-wealth may ordaine that in such a case the Judge should follow the publique forme of Judicature, though hereby it falleth out that a guiltlesse man is undone in his fortunes; and yet his cause knowne to be good by him that condemnes it. Thus he.

But what a loose point is this?

* *Less. de Jure, &c. l. 2. de Judice Dub. 10. Quia resp. habeat auctoritatem disponendi, &c.*

why hath not a man as true propriety in his estate as his life? or what authority hath the Common-wealth, causelessly to take away a mans substance or inheritance (being that he is the rightfull owner) more than a piece of himselfe? When his patrimony is settled upon him, and his in a due course of law and undoubted right of possession, what just power can claime any such interest in it, as without any ground of offence to dispossess him? Or what necessity is there that the forme of publique judgements should be perverted, unlesse an honest defendant must be undone by false sentence? Or rather is not the forme of publique judgement perverted, when innocence suffers for the maintenance of a formality? Or how is the Judge other than a partner in the injury, if for want of his seasonable interposition a good cause is lost, and a false plea prevails?

That

That therefore, which in the second place he alledgeth, that the Subject can have no reason to complaine of the Judge, for as much as it is out of his power to remedy the case, and to passe other sentence than is chalked forth by the rule of Law; might as well be alledged against him in the plea of life and death, wherein he will by no meanes allow the Judge this liberty of an undue commendation; neither is there any just pretence, why an honest and well-minded Judge should be so sparing in a case of life, and so too prodigall in matter of livelihood.

As for this third reason, that the mis-judgement in case of a pecuniary damage or banishment, may be afterwards capable of being reversed, and upon a new Traverse the cause may be fetcht about at further leisure; whereas death once inflicted is past all power of revocation; It may well

inferre that therefore there should bee so much more deliberation, and care had in passing sentence upon capitall matters, than civill, by how much life is more prcious, and irrevocable, than our worldly substance; but it can never inferre that injustice should bee tolerable in the one, not in the other. Justice had wont to be painted blind-fold, with a paire of scales in her hand; wherefore else, but to imply that he, who would judge aright, must not look upon the issue or event, but must weigh impartially the true state of the cause in all the grounds, and circumstances thereof, and sentence accordingly? To say then that a Judge may passe a doome formally legall, but materially unjust, because the case upon a new suit may be righted, were no other than to say, I may lawfully wound a man, because I know how to heale him againe.

Shortly therefore, whether it be in
causes

causes criminall, or civill, whether concerning life or estate, let those who sit in the seat of Judicature, as they will answer it before the great Judge of the World, resolve (what event soever follow) to judge righteous judgement, not justifying the wicked, not condemning the innocent; both which are equally abominable in the sight of the Almighty.

CASE VII.

Whether, and in what cases am I bound to be an accuser of another.

TO be an accuser of others, is a matter of much envy, and detestation, insomuch as it is the stile of the Devill himselfe to be *accusator fratrum*, an accuser of the brethren: Yet not of his owne brethren in evill; It was never heard that one evill spirit accused another; but of *our brethren*,

G

thren, Revelat. 12. 10. it was a voice from heaven which called him so: Saints on earth are the brethren of the glorious spirits in heaven; It is the wickednes of that malicious spirit to accuse Saints: But though the act be grown into hatred, in respect both of the Agent and of the Object; yet certainly there are cases wherein it will become the Saints to take upon them the person, and office of accusers.

Accusation therefore is either voluntary, or urged upon you by the charge of a superiour. Voluntary is either such as you are moved unto by the Conscience of some hainous and notorious crime committed, or to be committed by another, to the great dishonour of God, or danger of the common peace, whereto you are privy: or such as whereunto you are tyed by some former engagement of vow, or oath: In the former kinde;

a worthy Divine in our time travailing on the way, sees a leud man committing abominable filthinesse with a beast; the sinne was so foule and hatefull, that his heart would not suffer him to conceale it; hee therefore hastens to the next Justice, accuses the offender of that so unnaturall villany; the party is committed, endicted, and upon so reverend, though single) testimony found guilty.

Or, if in the case of a crime intended, you have secret, but sure intelligence, that a bloody villaine hath plotted a treason against the sacred person of your Sovereigne, or a murder of your honest neighbour; which hee resolves to execute; should you keep this fire in your bosome, it might justly burn you. Whether it be therefore for the discovery of some horrible crime done, or for the prevention of some great mischief to be done, you must either be an accuser, or an accessory.

The

The obligation to accuse is yet stronger, where your former vow or oath hath fore-engaged you to a just discovery; you have sworn to maintaine and defend his Majesty's royall Person, State, Dignity; and to make knowne those that wilfully impugne it; if now, you shall keep the secret counsels of such wicked designments, as you shall know to be against any of these, how can you escape to bee involved in a treason, lined with perjury?

These are accusations which your conscience will fetch from you, unasked: But if being called before lawfull authority, you shall be required upon oath, to testifie your knowledge even concerning offenders, of an inferiour nature; you may not detract your witnesse, though it amount to no lesse than an Accusation. Yet there are cases, wherein a Testimony thus required, tending to an accusation,

tion, may be refused; As in case of duty, and nearenesse of naturall, or civill relation; It were unreasonably unjust for a man to be pressed with interrogations, or required to give accusatory testimonies in the case of parents, or children, or the partner of his bed: Or if a man out of remorse of conscience shall disclose a secret sin to you formerly done, in a desire to receive counsaile, and comfort from you; you ought rather to endure your soule to be fetcht out of your body, than that secret to bee drawn out of your lips: Or if the question be illegal, as those that tend directly to your own prejudice; or those which are moved concerning hidden offences, not before notified by publique fame, or any lawfull ground of injury, which therefore the Judge hath no power to ask; In these cases, if no more, the refusall of an accusation, though required, is no other than justifiable.

But

But where neither the conscience of the horridnesse of a crime done; nor prevention of a crime intended, nor duty of obedience to a lawfull authority, nor the bond of an inviolable pre-engagement, call you to the Bar; It is not a more uncharitable, than thanklesse office to bee an accuser: Hence it is that Delators, and Informers, have in all happy and well-governed States, been ever held an infamous and odious kinde of Cattell. A *Tiberius*, and a *Domitian*, might give both countenance and reward to them, as being meet factors for their tyranny, but a *Vespasian*, and *Titus*, and *Antonius Pius*, and *Macrinus*, or what ever other Princes carryed a tender care to the peace and welfare of their Subjects, whipt them in the publique Amphitheater, and abandoned them out of their dominions, as pernicious, and intolerable. And as these mercenary Flies, whether of State,

State, or of Religion, are justly hateful, next to the publique executioners; so certainly, those busie spirited-men, which out of the itching humour of meddling, run from house to house, with tales of private detraction, may well challenge the next roome in our detestation. This together with the other, is that which God so strictly forbids in his Law, *Levit. 19. 16. Thou shalt not goe up and downe as a Tale-bearer amongst thy people, neither shalt thou stand against the bloud of thy neighbour: I am the Lord.* A practice which wise *Solomon*, though a great King; and (as one would think) out of the reach of tongues, cries downe with much feeling bitterneesse; *Prov. 18. 8. The words of the Tale bearer are as wounds, and they goe downe into the innermost parts of the belly:* No lesse than five severall times in his divine * *Proverbs*, inveighing sharply (as if

* *Prov. 11. 13. 20. 19. 26. 20. 26. 2.*

him-

himſelfe had been ſtung in this kinde) againſt theſe cloſe back-biting calumniationſ.

Shorlty then, accuſe when you are forced, either by the fouleneſſe of the fact, or the neceſſity of your duty: otherwiſe reſerve your tongue for better offices.

CASE VIII.

Whether a priſoner indicted of a felonious act which he hath committed, and interrogated by the Judge concerning the ſame, may ſtand upon the deniall, and plead Not guilty.

THE Caſuiſts vary; and out of reſpect to their owne Lawes, are much perplexed in their reſolutions: making the great ſcruple to be in the Juridicall interrogations, (which if the Judge have not proceeded in the due forme of Law required in ſuch caſes)

cases may warrant the offenders deni-
niall; and secondly, making diffe-
rence of the quality of the offence,
and danger of the punishment; which
if no lesse than capitall, may (say
they *) give just ground to the ac-
cused party, either to conceale the
truth, or to answer with such am-
phibolies, and equivocations, as may
seve to his owne preservation; in
which course, naturall equity will
beare him out, which allowes every
man to stand upon his owne defence:
And the case I perceiv is aggravated
in forraigne parts, as by the Rack, so
by an Oath administred to the per-
son accused (which they call + *Fur-*
mentum calumnie) which *Lesius* just-
ly calls a spirituall torture, by the
vertue whereof, hee solemnely urged,
not to deny what hee knowes, or be-
lieves to be true, concerning the bu-

* Rodriguez. Tract. Ordinis Judicialis cap. 10.
† Sorus l. 5. q 6. de Justi. 11. Rei, Art. 1.

finesse questioned; A practise, which I cannot blame * *Lessius*, if he professe to wish that the Pope, and all secular Princes, would joyne together to abrogate; as being an evident occasion of much perjury. To lay down and determine the case as it stands with us in our ordinary proceedings of justice; it must be premised:

1. To deny a knowne truth, and to averre a willfull lye, cannot be other than a sin.

2. There is a vast difference betwixt concealing a truth and denying it.

3. It may be sometimes lawfull to conceale some Truths, though never lawfull to deny or contradict them.

4. No man can be bound directly to accuse himselfe,

5. It is consonant to naturall equi-

* *L. ff. de jur. l. 2. cap. 13. dub. 3.*

ty, that a man for the saving of his life should use the helpe of all evasions that are not sinfull.

6. It cannot be sinfull to put himselfe upon a legall triall in a case importing his life.

7. There is no place for a legall triall, where there is an absolute confession of guiltinesse.

These positions being pre-required; I say, that it is lawfull for the prisoner, though convinced in his conscience of the fact, yet to plead **Not guilty** to the Indictment at the Barre: for as much as he doth therein, according to the sense both of the Judge, and Jury, onely hide and keepe back that Truth; the finding out, and evi-
ction whereof, lyes upon their further search and proove, so as he doth, in pleading *Not guilty*, in effect as good as say, What ever I finde in my selfe, I have no reason to confesse my guiltinesse; I stand upon my lawfull defence

fence, and caſt my ſelfe upon my juſt tryall; Yielding my ſelfe onely ſo far guilty, as your evidence and proofes can make me: let Juſtice paſſe upon me, I have no reaſon to draw on my owne condemnation: The plea thus conſtrued is lawfull, and juſt; wherein not the ſhuffling equivocations of the offender, but the upright verdict of a legall Jury muſt carry the cauſe: to which purpoſe, that which ſounds as a deniall in the accused, is nothing elſe but a profeſſed referring himſelfe to a juridicall triall of that fact, which he is not bound to confeſſe.

But when the hand of God hath once found out the man in his ſin; and he finds himſelfe legally convinced of his crime; it greatly behoves him (as *Joſhua* charged *Achan* after the lot had diſcovered his ſin) to give glory to God, in a free and full confeſſion of his wickedneſſe, and to be more open and ingenuous in his acknowledgement,

ledgement, than he was close, and reserved in his plea : wherein as he shall discharge his conscience to that great and holy God, whom he hath offended, so he shall thus render some kind of poore satisfaction to that Society of men, whom hee hath scandalized by his crime. In which regard I cannot but marvell at the strange determination of learned * *Azpilcueta*, the Oracle of *Confessaries*, who teaches, that the prisoner, who being rightly interrogated by the Judge, stood stiffly in deniall of the fact, and is upon his Condemnation (carried to his execution, is not bound at his death to confesse the crime to the world, if he have before secretly whispered it in the ear of his ghostly father, and by him received absolution.

A sentence that allowes the smothering of truthes, and the strangling of just satisfaction to those who are

* Mart. Azpil. Navar. enchirid. cap. 25. num. 38. concerned,

concerned, as patience, in the offence; and laſtly, highly injurious to publique Juſtice; whoſe righteous ſentence is by this meanes leſt queſtionable, and obnoxious to unjuſt cenſure.

How much more requiſite were it that a publique confeſſion ſhould, in this caſe, ſave the labour of a private, whereby certainly, the ſoule of the offender would be more ſenſibly unloaded, juſtice better vindicated, more glory would accrew to God; and to men more ſatisfaction.

But however it be lawfull for the accuſed to ſtand upon theſe points of legality in the proceedings againſt him: yet for my owne part; ſhould I be ſo farre given over, as to have my hand in bloud; and thereupon be arraigned at the barre of publique Juſtice; I ſhould out of juſt remorse be the firſt man that ſhould riſe up againſt my ſelfe; and (which in other
mens

mens cases were utterly unlawfull) be my owne Accuser, Witnesse, and Judge: and this disposition I should rather commend in those, whose conscience hath inwardly convicted them for haynously criminous: that since they had not the grace to resist so flagitious a wickednesse; they may yet endeavour to expiate it, before men, with an ingenuous confession: as before God, with a deepe and serious repentance.

CASE IX.

Whether, and how farre a man may take up armes in the publique quarrell of a war.

WArre is no other than a necessary evill, necessary in relation to peace: onely, as that without which so great a blessing cannot bee had: As the wise Woman said to
Feab,

Joab, 2 *Sam.* 20. 18. they ſhould firſt treat with the men of *Abel*, ere they ſmite: & upon the charge of the Lord of hoſts, *Deut.* 20. 10. conditions muſt firſt be tendered even to heathen enemies, before any acts of hoſtility ſhall be exerciſed; where this which is the worſt of all remedies, proves needfull, if you aſk how farre it is lawfull to ingage; I muſt aſke you, (ere I can returne answer) firſt of the juſtice of the quarrell: for ſurely where the warre is knowne to be unjuſt, the willing abettors of it cannot waſh their hands from blood: To make a warre juſt (as our Caſuiſts rightly) there muſt bee a lawfull authority to raiſe it; a juſt ground whereon to raiſe it; due formes and conditions in the raiſing, managing, and ceſſation of it: That no authority leſſe than ſupreame can wage a warre, it is cleare in nature; for that none other beſides it can have power of

of life and death; which both must lye at the publique stake in warre.

That none but a just and weighty cause can be the ground of a warre, every mans reason apprehends; for how precious a blessing had that need to bee, that is held worth the purchasing with the price of so much bloud; and how heavy a curse must that needes bee, which can onely be remedied, or prevented by so grievous a judgement as war?

That due termes and conditions are requisite to bee offered ere warre be undertaken; and observed in the managing and ceasing of it, humanity it self teacheth us; without which men should run upon one another with no lesse fury and disorder than beasts; not staying for any capitulation but the first advantage; nor terminating their discord in any thing but utter destruction.

Where all or any of these are wan

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ting.

ting, the warre cannot be just : and where it is known not to be such, woe be to those hands that are willingly active in prosecuting it.

Now the care of all these three maine requisites must lie chiefly upon that Power, which is entrusted by the Almighty, with the over-ruling of publique affaires : For the Subject, as he is bound to an implicate reliance upon the command of the supream power ; so (unlesse it be in a case notoriously apparent to be unjust) must yeild a blind-fold obedience to authority ; going whither he is led, and doing what he is bidden ; But if the case be such, as that his heart is fully convinced of the injustice of the enterprise, and that he clearly finds that he is charged to smite Innocence, and to him, against God ; I cannot blame fight, if with *Sauls* footmen (when they were commanded to fall upon the Priests of the Lord) he withhold his

his hand, and craving pardon, shew lesse readinesse to act, than to suffer.

In the second place, I must aske you with what intentions you addressse your selfe to the field; if it be out of the conscience of maintaining a just cause, if out of a loyall obedience to lawfull authority: I shall bid you go on, and prosper: but if either malice to the parties opposed, and therein desire of revenge, or a base covetousnesse of pay, or hope and desire of plunder have put you into armes; repent and withdraw: For what can be more sordid or cruell, than to be hired for dayes-wages to shed innocent blood? Or what can bee more horribly mischievous for a Man, than to kill, that hee may steale?

Upon your answer to these questions it will be easie for mee to returne mine; In a just quarrell, being there-to lawfully called, you may fight;

warrantable authority hath put the sword into your hand; you may use it. But take heed that you use it with that moderation, and with those affections that are meet: Even an authorized hand may offend in striking; Magistrates themselves, if there be revenge in their executions, doe no other than murder: Far be it from you to take pleasure in blood; and to enjoy another mans destruction: If (especially in those warres that are intestine) you shall mingle your teares with the blood, which you are forced to spill, it may well become Christian fortitude.

Shortly; doe you enter into your armes, imprest, or voluntary? If the former, you have nothing but your owne heart to looke unto for a fit disposition; That Power, whom you justly obey, must answer for the cause; If the latter, you have reason diligently to examine all the necessary

sary points, of the power, of the cause, of your intentions : as well considering that in a warre it is no lesse impossible that both sides should be in the right, than that in a contradiction both parts should be true : Here therefore your will makes it selfe the Judge of all three ; and (if any of them faile) leaves you answerable for all miscarriages ; so as you had need to be carefully inquisitive, in this case, upon what grounds you goe ; that so (whatsoever may befall) a good conscience may beare you out in the greatest difficulties, and saddest events that are wont to attend upon warre.

H 3**C A S E**

CASE X.

*Whether and how farre a man may act
towards his own Death.*

Directly to intend or endeavour that, which may worke his owne death, is abominably wicked, and no lesse than the worst murder.

For if a man may not kill another, much lesse himselfe; by how much he is nearer to himselfe than to another: and certainly if we must regulate our love to another by that to our selves, it must follow that love to our selves must take up the first roome in our hearts: and that love cannot but be accompanied with a detestation of any thing that may bee harmefull to our selves. Doubtlesse, many that can be cruell to another, are favourable enough to themselves; but never man that could be cruell to himself would be sparing to another's blood.

To

To will or attempt this is highly injurious to that God, whose we only are; who hath committed our life as a most precious thing to our trust, for his use, more than our owne; and will require from us an account of our managing of it, and our parting from it. It is a foule misprision in those men, that make account of themselves as their owne, and therefore that they are the absolute Lords of their life: Did they give themselves their owne being? had they nothing but meere nature in them? can they but acknowledge an higher hand in their formation, and animating? What a wrong were it therefore to the great Lord and giver of life, to steale out of the world, without his leave that placed us there? But much more if Christians, they know themselves, besides, dearly paid for; and therefore not in their own disposing, but in his that bought

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them.

them. Secondly, most desperately injurious to our selves, as incurring thereby a certaine damnation (for ought appeares to lookers on) for ever, of those soules which have wilfully broken Gods more easie, and temporary prison, to put themselves upon the direfull prison of Satan to all eternity.

Nature it selfe, though not enlightened with the knowledge, of the estate of another world, found cause to abhor this practice : However the Stoicall Philosophers, and some high Roman spirits following their doctrine, have beene liberall of their lives; the *Thebans* of old professed detestation of this worst of prodigalities : And the *Athenians* enacted that the hand, which should be guilty of such an act, should be cut off, and kept unburied ; And it was wisely ordained by that Grecian Commonwealth, when their Virgins (out of a
peevis

peevish discontentment) were growne into a selfe-killing humour, that the bodies of such offenders should bee dragged naked though the streets of the City; the shame whereof stopped the course of that mad resolution.

It is not the heaviest of crosses, or the sharpest bodily anguish that can warrant so foule an act. Well was it turned off by *Amisthenes* of old, when in the extremity of his paine he cried out, Oh who will free me from this torment! and *Diognes* reached him a poynard, wherewith to dispatch himselfe: Nay, said hee, I said, from my torment, not from my life: as well knowing it neither safe, nor easie, to part with our selves upon such termes.

Farre, farre be it from us to put into this ranke and file those worthy Martyrs, which in the fervour of their holy zeale have put themselves forward to martyrdome; and have cou-

rageouſly prevented the luſt and fury of Tyrants, to keep their chaſtity, and faith inviolable. I looke upon theſe as more fit objects of wonder, than either of cenſure, or imitation. For theſe (whom wee may well match with *Sampſon*, and *Eleazar*) what Gods ſpirit wrought in them, hee knowes that gave it; Rules are they by which we live, not examples.

Secondly, However wee may not by any meanes directly aſt to the cutting off the thred of life; yet I cannot but yeild with learned * *Leſſius*, that there may fall out caſes, wherein a man may (upon juſt cauſe) doe, or forbear ſomething whereupon death may indirectly enſue: Indirectly, I ſay, not with an intention of ſuch iſſue: for it is not an univerſall charge of God, that no man ſhould upon any occaſion expoſe his life to a probable danger; if ſo, there would be

* *Leſſ. de Jure l. 2. c. 9. dub. 6.*

no warre, no traffique; but onely that he should not causelessly hazard himselfe; nor with a resolution of wilfull miscarriage.

To those instances hee gives of a souldier that must keep his station, though it cost him life: of a prisoner that may forbear to flee out of prison, though the doores be open: of a man condemn'd to dye by hunger, in whose power it is to refuse a sustenance offered: of a man that latches the weapon in his owne body to save his Prince: or of a friend, who when but one loose is left to preserve the life of two, refrains from his part and dyes first: or that suffers another to take that planke in a shipwrack, which himselfe might have preposessed, as trusting to the oares of his armes: or that puts himselfe into an infected house out of meer charity to tend the sick, though hee know the contagion deadly; or in a Sea-fight
blowes

blows up the deck with gun-powder, not without his own danger; or when the house is on fire, casts himselfe out at the window with an extreame hazard: To these, I say, may be added many more; as the cutting off a limb to stop the course of a Gangrene; to make an adventure of a dangerous incision in the body, to draw forth the stone in the bladde; the taking of a large dose of opiate pills, to ease a mortall extremity; or lastly, when a man is already seized on by death, the receiving of some such powerfull medicine, as may facilitate his passage (the defect of which care and art, the eminently-learned Lord * *Verulam* justly complains of in Physicians:) In these, and the like cases, a man may lawfully doe these things which may tend, in the event to his owne death, though without an intention of procuring it.

* *σοφιστία*. L *Verul.* Adv. of Learn.

And

And unto this head must bee referred those infinite examples of deadly sufferings for good causes, willingly embraced for conscience sake. The seven Brethren in the *Maccabees*, (alluded to by St. Paul to his *Hebrewes*, *Heb. 11. 35.*) will and must rather endure the butchering of their owne flesh, than the eating of Swines flesh, in a willing affront of their Law: *Daniel* will rather dye than not pray. *Shadrach*, *Mesbach*, and *Abednego*, will rather fall downe bound into the fiery Fornace seven-fold heated, than fall down before the golden Image.

And every right-disposed Christian will rather welcome death than yeild to a willing act of Idolatry, Rebellion, Witchcraft: If hereupon death follow by the infliction of others, they are sinfull agents, hee is an innocent sufferer.

As for that scruple among our Casuists, whether a man condemned to
dye

dye by poyson, may take the deadly draught that is brought him; it is such, as wise *Socrates* never made of old, when the *Athenians* tendered him his hemlock; and indeede it may as well be disputed, whether a man condemned to dye by the Axe, may quietly lay downe his head upon the Block; and not, but upon force, yeild to that fatall stroke. A juster scruple is, whether a man condemned to a certaine and painefull death, which hee cannot possibly eschew; may make choice rather of a more easie passage out of the world; wherein I marvell at the indulgence of some Doctors, that would either excuse, or mince the matter. For although I cannot blame that naturall disposition in any creature, to shrink from pain, and to affect (what it may) the shifting from extremity of miserie: yet for a Christian so to doe it, as to draw a greater mischief to himselfe,

selfe, and an 2pparent danger to his soule, it cannot justly beare any other than a hard construction. For thus to carve himselfe of Justice, is manifestly to violate lawfull authority; and whiles he would avoid a short pain, to incur the shame and sin of a selfe-executioner.

But if in that way, wherein the doome of death is passed, a man can give himselfe ease, or speed of dissolution (as when a Martyr being adjudg'd to the fire, use the helpe of a bagge of Gun-powder, to expedite his passage) it cannot be any way judged unlawfull: The sentence is obeyed, the execution is accordingly done; and, if the patient have found a shorter way to that end which is appointed him, what offence can this be either to the Law, or to the Judge?

RESO.

THE [illegible] OF [illegible]

[illegible text]

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[illegible text]




RESOLUTIONS.

The third Decade.

Cases of Piety and Religion.

CASE I.

*Whether upon the appearance of Evil
Spirits wee may hold discourse with
them; and how we may demean our
selves concerning them.*

 **T**hat there are evill spirits,
"is no less certaine than
that there are men:
None but a Sadduce,
or an Atheist can make
question of it.

That evill spirits have given cer-
taine

taine proofes of their presence with men, both in visible apparitions, and in the possessions of places, and bodies, is no lesse manifest, than that we have soules, whereby they are discerned.

Their appearances are not wont to be without grievous inconveniences; whether in respect of our dreadfulnessse, or their dangerous insinuations.

It is the great mercy of the God of Spirits, that hee hath bound up the evill Angels in the chaines of darknessse, restraining them from those frequent, and horrible appearances which they would otherwise make to the terrour, and consternation of his weak creatures.

Whensoever it pleaseth the Almighty, for his owne holy purposes, so farre to loosen, or lengthen the chaines of wicked spirits, as to suffer them to exhibit themselves in some
assumed

assumed shapes unto men, it cannot but mainly import us to know, what our deportment should be concerning them. Doubtlesse to hold any faire termes of commerce, or peace (much more of amity and familiarity) with them, were no better than to professe our selves enemies to God; for such an irreconcilable hostility there is betwixt the holy God, and these malignant spirits, that there can bee no place for a neutrality in our relation to them: so as hee is an absolute enemy to the one, that bids not open defiance to the other.

As therefore wee are wont by our silence to signifie our heart-burning against any person (in that we abide not to speake unto those whom wee hate,) so must wee carry our selves towards evill spirits: And if they beginne with us, as that Devill did in in the Serpent with *Eve*; how unsafe and deadly it may bee to hold that
with

with them, appeares in that first example of their onset; the issue whereof brought misery, and mortality upon all mankind; yet then, were our first parents in their innocency, and all earthly perfection: wee now so tainted with sinne, that Satan hath a kinde of party in us, even before his actual temptations.

As therefore wee are wont to say that the fort that yeilds to parley is halfe won; so may it prove with us, if we shall give way to hold discourse with wicked spirits; who are farre too crafty for us to deale withall: having so evident an advantage of us, both in nature (we being flesh and blood, they spirituall wickednesse) and in duration, and experience, we being but of yesterday, they coctaneous with the world and time it selfe.

If you tell mee that our Saviour himselfe interchanged some speeches with the spirits whom he ejected; it
is

is easily answered, that this act of his was never intended for our imitation; sith his omnipotence was no way obnoxious to their malice, our weakness is.

I cannot therefore but marvell at the boldnesse of those men, who professing no small degree of holinesse, have dared to hold familiar talk with evill spirits, and could be content to make use of them for intelligence; as the famous Jesuite, in our time, *Pere Cotton*; who having provided 50. questions to be propounded to a *Demoniack* (some concerning matters of learning, some other matters of State, concerning the then French King and the King of *England*) and having them written down under his owne hand to that purpose; being questioned concerning it, answered, that hee had licence from *Rome* to tender those demands: as I received it upon certaine relation from the
learned

learned Dr. *Tilenus* with many pregnant and undeniable circumstances, which I need not here expresse. Although this need not seeme strange to me, when I finde that * *Navarre* determines plainly, that when evill spirits are present (not by our invocati-on) as in possessed bodies, it is lawfull to move questions to them, (so it be without our paayers to them, or pact with them for the profit of others; yea, thus to confer with them, even out of vanity, or curiosity, is but venial at the most: Thus he, with whom[†] *Lessius* goes so far as to say, *Licetum est petere verbo à Diabolo ut nocere desinat*, &c. It is lawfull to move the Devill in words to cease from hurting, so that it be not done by way of deprecation, or in a friendly compliance, but by way of indignation: A distinction which I confesse past the ca-

* *Navarr. Enchir. cap. 11. n. 28.* † *Less. l. 2. de magia cap. 44. dub. 6,*

capacity of my apprehension; who have not the wit to conceive how a man can move without implying a kinde of suite; and how any suite can consist with an indignation.

It savours yet of a more heroicall spirit, which the Church of *Rome* professeth to teach and practice, the ejection of evill spirits by an imperious way of command; having committed to her Exorcists a power of Adjuration, to which the worst of Devils must be subject; a power more easily arrogated, than really exercised: Indeed, this over-ruling authority was eminently conspicuous, not onely in the selected twelve, and the seventy Disciples of Christ, who returned from their Embassie with joy, (*Luk.* 10. 17.) that the Devils were subject to them through his name, but even in their holy Successors of the Primitive Church; whiles the miraculous gifts of the holy Ghost were sensibly poured

red out upon men ; but if they will be still challenging the same power ; why doe they not as well lay claime to the speaking of strange tongues ? (*Mar.* 16. 17. 18) to the super-naturall cure of all diseases ? to the treading on serpents and scorpions ? to the drinking of poysons without an Antidote ? and if they must needs acknowledge these faculties above their reach, why doe they presume to divide the Spirit from it selfe ; arrogating to themselves the power of the greatest workes, whiles they are professedly defective in the least ? wherein surely, as they are the true successors of the sonnes of *Scēva*, *Act.* 19. 13, 14, 15, 16. who would be adjuring of Devils by the name of Jesus, whom *S. Paul* preached, so they can looke for no other intertainment than they found from those *Demoniacks*, which was to be baffled, and beaten, and wounded.

Especiall,

Especially, if we consider the foule superstition, and grosse magick, which they make use of in their Conjurations; by their owne vainely-devised Exorcismes, seoffing a supernaturall vertue upon drugges, and herbes, for the dispelling, and staving off all evill spirits; Because the bookes are not perhaps obvious, take but a taste in one, or two: * In the *treasure of Exorcismes*, there is this following Benediction of Rue, to be put into an hallowed paper, and to be carried about you and smelled at for the repelling of the Invasion of Devils †. I conjure thee ô thou creature of Rue, by the holy Lord, the Father, the Almighty and Eternall God, which bringeth forth grasse in the moun-

* *Theſaurus Exorcismorum; atque Conjuracionum terribilium, &c.* Tract. Dispersi demonum. Fratri Valerii Polybori Patavini. Ord. Minorum Conventualium † Sic applicabile. 3. Rutæ in charta benedicta super se portandæ olfaciendæ, ad omnem invasionem diabolicam repellendam.

raines, and herbes for the uſe of man :
And which by the Apoſtle of thy
Sonne our Lord Jeſus Chriſt, haſt
taught, That the weake ſhould eat
Herbes : I conjure thee that thou bee
blessed, and ſanctified to reſtaine ths
inviſible power and vertue, that who-
ſoever ſhall carry thee about him, or
ſhall ſmell to thee, may be free from
all the uncleanneſſe of Diabolicall in-
ſatuation; and that all Devills, and
all Witchcrafts may ſpeedily fall
from him, as herbes or graſſe of the
earth: through the ſame our Lord Je-
ſus Chriſt, which ſhall come to judge
the quick and the dead, and the world
by fire. The like is preſcribed to be
done to the ſeedes of *Hypericon* or St.
Johns wort.

* Adde to this, the horrible fumi-
gation to this purpoſe as it followes.
I conjure thee O thou Creature of

* Applicabile. 17. Tit. *Profumigatio horribilis, ejuſ-
que vulgata benedictio.*

Galbanum,

Galbanum, Sulphur, Assa fœtida, Aristolochium, Hypericon and *Rue*, by the + living God, by the + true God, &c. by Jesus Christ, &c. that thou be for our defence; and that thou be made a perpetuall fumigation, exorcised, + blessed, and consecrated to the safety of us, and of all faithfull Christians, and that thou be a perpetuall punishment to all malignant spirits, and a most vehement, and infinite fire unto them; more than the fire and brimstone of hell is to the infernall spirits there, &c.

But what doe I trouble you with these dreadfull incantations, whereof the allowed bookes of Conjuratiō are full? To these I may adde their application of holy water, (wherein they place not a little confidence) which (saith *Lessius*) receives the force from the prayers of the Church, by the meanes whereof it comes to

* Less. ubi supra Dubit. 5^o

pasſe, that it is aſſiſted with divine power; which (as it were) reſts upon it, and joynes with it, to the averting of all the infeſtations of the Devill: But ſaine would I learne where the Church hath any warrant from God to make any ſuch ſuit; where any overture of promiſe to have it granted? what is their prayer without faith? and what is their faith without a word? But I leave theſe men (together with their Croſſes, and Ceremonies, and holy reliques, wherein they put great truſt in theſe caſes) to their better informed thoughts. God open their eyes that they may ſee their errors.

For us, what our demeanour ſhould be in caſe of the appearance, or moleſtation of evill ſpirits, we cannot deſire a better patterne than *S. Paul*; his example is our all-ſufficient inſtruction, *2 Cor. 12. 7, 8.* who when the meſſenger of Satan was ſent to buffet

buffet him, fell presently to his prayers ; and instantly besought God thrice, that it might depart from him. Lo he that could command evil spirits out of the bodily possession of others ; when it comes to his own turne to be buffeted by them, betakes himselfe to his prayers to that God, whose grace was sufficient for him : *Verse 9.* To them must we still have our recourse ; if wee thus resist the Devil he shall flee from us : *Iam. 4. 7.* In the Primitive times, those that could command, needed not to sue : & therefore fasting and prayers, was an higher (as a more laborious) work (to this purpose) in the Disciples, than their imperative course of ejection ; but for us, we that have no power to bid, must pray ; Pray, not to those ill guests that they would depart, not to the blessed Virgin, or our Angel-Keeper that they would gard us from them, but to the great God of heaven,

who commands them to their chains: This is a sure and everlasting remedy, this is the onely certaine way to their foile, and our deliverance, and victory.

CASE II.

How farre a secret pact with evill spirits doth extend, and what actions and events must be referred thereunto.

IT is a question of exceeding great use, and necessity, for certainly many thousands of honest, and well-minded Christians are in this kinde drawne into the snares of Satan, unwarily, and unwittingly: For the determining of it, these two grounds must be laid; First, that there is a double compact with Satan; One direct and open, wherein Magicians and Witches, upon wofull conditions
and

and direfull ceremonies, enter into a mutuall covenant with evill spirits: The other, secret and indirect, where in nothing is seen, or heard, or known to be agreed upon; onely by a close implication, that is suggested and yeilded to be done, which is invisibly seconded by diabolicall operation.

The second ground is, that whatsoever hath not a cause in nature according to Gods ordinary way must be wrought either by good or evill spirits: That it cannot bee supposed that good Angels should bee at the command of ignorant, or vicious persons, of either sexe, to concurre with them in superstitious acts, done by meanes altogether in themselves ineffectable and unwarrantable: and therefore that the Devill hath an un-seene hand in these effects, which hee marvailously brings about, for the winning of credit with the world, and for the obliging and engaging of his

owne Clients : of this kinde there is too lamentably much variety in common experience : Take an handfull, if you please, out of a full sack : let the first be, that authentick charme of the Gospell of St. *Iohn* allowed in the parts of the Romish correspondence, wherein the first verses of that Divine Gospell are singled out, printed in a small roundell, and sold to the credulous ignorants, with this fond warrant, that whosoever carries it about him shall be free from the dangers of the dayes mis-happes : The booke and the key, the five and the sheeres for the discovery of the Thiefe ; The notching of a stick with the number of the warts which wee would have removed, the rubbing of them with raw flesh, to be buried in a dunghill that they may rot away insensibly therewith, or washing the part in moon-shine for that purpose : words, and characters, of no signification,

cation, or ordinary forme, for the curing of diseases in man, or beast, more than too many whereof we find in *Cornelius Agrippa*, and *Paracelsus*.

Formes of words and figures for the stanching of blood, for the pulling out of thornes, for easing paine, for remedying the biting of a mad dog.

Amulets made up of Reliques, with certaine letters and crosses, to make him that weares them invulnerable,

Whistling for a winde wherewith to winnow, as it is done in some ignorant parts of the west.

The use of an holed flint, hanged up on the rack, or beds head, for the prevention of the night-mare in man, or beast.

The judging by the letters of the names of men or women, of their fortunes, as they call them, according

ding to the ſerious ſopperies of *Ar-
candam*.

The ſeventh Sonne's laying on of hands for the healing of diſeaſes; The putting of a verſe out of the *Pſalmes* into the veſſell to keep the wine from ſowering; The repeating of a verſe out of *Virgil* to preſerve a man from drunkenneſſe all that day following, Images aſtronomically framed under certaine conſtellations to preſerve from ſeverall inconveniences, as under the ſigne of the Lion the figure of a Lion made in gold, againſt melancholick fancies, dropſie, plague, fevers: which *Leſius* might well marvell how *Cajetan* could offer to defend; when all the world knowes how little proportion and correſpondence there is betwixt thoſe imaginary ſignes in Heaven, and theſe reall creatures on Earth.

Judiciary Aſtrology, as it is commonly practiſed, whether for the
caſting

casting of nativities, prediction of voluntary, or civill events, or the discovery of things stolne or lost: for, as the naturall Astrology, when it keeps it selfe within its due bounds is lawfull, and commendable, (although not without much uncertainty of issue;) so that other Calculatory, or figure casting Astrology is presumptuous and unwarrantable; cryed ever downe by Councells and Fathers, as unlawfull; as that which lies in the mid-way betwixt magick, and imposture, and partakes not a little of both.

The anointing of the weapon for the healing of the wound, though many miles distant; wherein how confident soever some intelligent men have beene) doubtlesse there can be nothing of nature, sith in all naturall agencies, there must necessarily be a contraction either reall, or virtuell; here in such an intervall, none can
be:

bee : neither can the efficacy bee ascribed to the salve ; since some others have undertaken and done the cure, by a more homely and familiar ointment ; It is the ill-bestowed faith of the agent that draws on the successe from the hand of an invisible Physician.

Calming of tempests, and driving away devills by ringing of bells, halloed for that purpose.

Remedy of witcheries, by heating of Irons, or applying of Crosses. I could cloy you with instances of this kinde, wherewith Saran beguiles the simple upon these two mis-grounded principles ; 1. That in all experience they have found such effects following upon the use and practise of such meanes ; which indeed cannot be denied : Charms and Spels commonly are no lesse unfailing in their working, than the best naturall remedies ; doubtlesse, the Devill is a most skillfull

full Artift : and can do feats beyond all mortall powers ; but God bleffe us from imploing him : 2 *King.* 1. 3. Is it not because there is not a God in *Israel* that we goe to enquire of *Baal-Zebub* the God of *Ekron* ?

2. That there may be hidden causes in nature for the producing of such effects, which they know not ; neither can give any reason of their operations, whereof yet we doe commonly make use, without any scruple ; and why may not these be ranged under the same head : which they have used with no other but good meaning, without the least intention of reference to any malignant powers ; In answer whereto, I must tell them , that their best plea is ignorance, which may abate the sinne, but not excuse it : There are indeed, deep secrets in nature, whose bottome we cannot dive into, as those wonders of the load-stone ; a piece outwardly

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contemptible, yet of such force as approacheth neare to a miracle: and many other strange sympathies and antipathies in severall creatures; in which ranke may be set the bleeding of the dead at the presence of the murtherer: and some acts done for the discovery of witchcraft both in this, and our neighbor kingdome; But withall, though there be secrets in nature which we know not how she works; yet we know there are works which are well knowne, that she cannot doe: how far her power can extend is not hard to determine: and those effects which are beyond this, (as in the forementioned particulars) we know whither to ascribe: Let it be therefore the care and wisdom of Christians to looke upon what grounds they goe: whiles they have God, and nature for their warrant, they may walke safely; but where these leave them, the way leads

leades downe to the Chambers of death,

CASE III.

Whether reserving my conscience to my self, I may be present at an Idolatrous devotion; or whether in the lawfull service of God I may communicate with wicked persons.

THe question is double: both of them of great importance; The former I must answer negatively, your presence is unlawfull upon a double ground; of sinne, and of scandall: of sin, if you partake in the Idolatry; of scandall, if you doe but seeme to partake: The scandall is three-fold; you confirm the offenders in their sin, you draw others by your example into sin, you grieve the spirits of those wiser Christians, that are the sad witnesses of your offence.

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The great Apoſtle of the Gentiles (1 Cor. 8. 4, 5, 6, 7, 8, 9, 10.) hath fully determined the queſtion in a more favourable caſe: the heathen ſacrifices were wont to be accompanied (in imitation of the Jewiſh, preſcribed by God himſelfe) with feaſtes; the owners of the feaſt civilly invite the Neighbours (though Chriſtians) to the banquets; The Tables are ſpread in their Temples; The Chriſtian gueſts, out of a neighbourly ſociety, goe, ſit, eate with them: *S. Paul* cries downe the practice, as utterly unlawfull: yet this was but in matter of meat; which ſure was Gods, though ſacrificed to an Idoll; how much more muſt it hold in rites and devices, meerely, either humane, or devilish?

I need not tell you of the Chriſtian Souldiers in the Primitive Perſecution, who when they found themſelves by an ignorant miſtaking drawne,

un

under a pretence of loyalty, into so much ceremony as might carry some semblance of an Idolatrous thurification, ranne about the City in an holy remorse, and proclaimes themselves to be Christians: Nor how little it excused *Marcellinus* Bishop of *Rome* from an heavy censure, that he could say he did but for company cast a few graines of incense into the fire. The charge of the Apostle (1 *Thes.* 5. 22.) is full, and peremptory, that we should abstaine from every appearance of evill.

It is a poore plea that you mention of the example of *Naaman*. Alas, an ignorant Pagan! whose body if it were washed from his leprosie, yet his soule must needs be still foule: 2 *Kings* 5. 17, 18, 19. yet even this man will thenceforth offer neither burnt-offering, nor sacrifice unto any other God, but unto the Lord, nor upon any ground but the Lords peculiar:

culiar; and will therefore lade two Mules with Israelitish earth; and is now a professed convert: Yea, but he will still bow in the Temple of *Rimmon*: But how will he bow? Civilly onely, not religiously; In the house of *Rimmon*, not to the Idoll; Not in relation to the false deity, but to the King his Master: you shall not take him going alone under that Idolatrous roofe, but according to his office, in attendance of his Sovereigne: nor bowing there, but to support the arme that lean'd upon him: And if upon his returne home from his journey he made that solemne protestation to his Syrians, which he before made to the Prophet: Take notice, O all ye Courtiers, and men of *Damascus*, that *Naaman* is now become a Profelyte of *Israell*, that hee will serve and adore none but the true God; and if you see him at any time kneeling in the Temple of your Idoll

Rimmon,

Rimmon, know that it is not done in any devotion to that false God, but in the performance of his duty and service to his royall Master; I see not but the Prophet might well bid him, *Go in Peace*. How ever that ordinary and formall valediction to a *Syrian*, can be no warrant for a Christians willing dissimulation.

It is fit for every honest man to seeme as he is; what do you howling amongst Wolves, if you be not one? Or what do you amongst the Cranes, if you be a Stork: It was the charge of *Jehu*, when he pretended that great sacrifice to *Baal*; Search, and looke that there be here with you none of the servants of the Lord, (2 *King*. 10. 23.) but the worshippers of *Baal* onely: surely had any of Gods Clients secretly shrouded himselfe amongst those Idolaters, his blood had beene upon his owne head: Briefly then, if you have a minde to keepe your selfe

in a ſafe condition for your ſoule, let me lay upon you the charge which *Moses* enforced upon the congregation of *Iſrael* in the caſe of *Corah's* inſurrection, *Depart I pray you from the tents of theſe wicked men, and touch nothing of theirs, leſt ye be conſumed in all their ſins.* Numb. 16. 26.

The latter I muſt answer affirmatively: If the Ordinances be holy, why ſhould you not take your part of them?

It is an unjuſt niceneſſe to abridge your ſelfe of a bleſſing, for another mans unworthineſſe: Doubtleſs, there ought to be a ſeparation of the precious from the vile; the neglect whereof is the great ſinne of thoſe, whom in duty it concernes to perform it; but where this is not accordingly done, ſhall I ſuffer for anothers offence? my owne finnes may juſtly keepe me off from Gods Table; if another mans may doe ſo too, I appropriate
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the guilt of his sin to my own wrong: surely it argues but small appetite to these heavenly viandes, if you can be put off with a pretence of others faults: Judge of the spirituall repast by this earthly; were you thoroughly hungry, would you refrain from your meat because one of the guests hath a paire of foule hands: that may be a just eye-sore to you, but no reason why you should forbear wholesome dishes: Carve you for your selfe, and looke to your owne trencher, he feedes for himselfe, not for you; sinne is the uncleannesse of the soule, that cleaves closer to it, than any outward nastinesse can to the skin; to feed thus foule then is doubtlesse unwholesome, to himselfe, it can be no hurt to you. But you are ready to straine the comparison higher to your owne advantage: say, that one of the guests hath a plague-sore running upon him, shall I then thinke it safe

safe to sit at the Table with him: now sin is of a pestilent nature, spreading its infection to others besides its owne subject; therefore it is meet we keepe aloofe from the danger of his contagion: True, there are finnes of a contagious nature, apt to diffuse their venome to others, (as there are other some whose evill is intrinsecall to the owner) but these infect by way of evill counsailes, or examples, or familiar conversation, not by way of a meere extemporary presence of the person, by spreading of their corruption to those that are taken with them; not by scattering abroad any guilt to those that abhorr them. Well did our Saviour know how deadly an infection had seised on the soule of *Judas*, yet he drives him not from his board, lest his sinne should taint the Disciples.

The spirit that writes to the seven *Asian Churches* (*Rev. 2. 20, 21, 22.*)

saw

saw and professed to see the horrible infection spread amongst the *Thyrtians* by the doctrine and wicked practises of their *Fesebell*, yet all that he enjoyns the godly party is to hold their own.

Have no fellowship, saith the Apostle *with the unfruitfull works of darknesse*, (*Eph. 5. 11.*) Loe he would not have us partake in evill: he doth not forbid us to partake with an evil man in good works.

However therefore we are to wish and endeavour (in our places) that all the Congregation may be holy; and it is a comfortable thing to joyn with those, that are truly conscionable, and carefully observant of their wayes, in the immediate services of our God: yet where there is neglect in the overseers, and boldnesse in the intruders, and thereupon, Gods sacred Table is pestred with some unworthy Guests; it is not for you, upon this ground,
to

to deprive your selfe of the benefit of Gods blessed Ordinances; notwithstanding all this displeasing encombrance you are welcome, and may be happy.

CASE IV.

Whether vowes bee not out of season now under the Gospel; of what things they may be made; how farre they oblige us; and whether and how far they may be capable of release.

IT is a wrongfull imputation that is cast upon us by the Roman Doctors, that we abandone all vowes under the Gospell: They well see that we allow and professe that common vow (as *Lesius* termes it) in Baptisme; which yet both *Bellarmino*, and he, with other of their con sorts, deny to be properly such: It is true, that as infants make it by their proxies,

proxies, there may seeme some impropriety of the engagement as to their persons; but if the party Christened be of mature age, the expresse vow is made absolutely by, and for himselfe. Besides this, we allow of the renovation of all those holy vowes, (relating to the first) which may binde us to a more strict obedience to our God, yet more, though we doe not now allow the vowes of things in their nature indifferent, to be parts of Gods worship, (as they were formerly under the law, yet we doe willingly approve of them, as good helps and furtherances to us, for the avoiding of such sinnes as we are obnoxious unto; and for the better forwarding of our holy obedience.

Thus, the charge is of eternall use, Psal. 76. 11. *Vow unto God, and performe it.* Not that we are bound to vow; that act is free and voluntary:

but that when we have vowed, we are straitly bound to performance : It is with us for our vows as it was with *Ananias* and *Saphira* for their substance. Whiles it remained (saith *S. Peter*) was it not thine own ? (*Acts* 5.4.) Hee needed not to sell it, he needed not to give it; but if he will give, he may not reserve : If he profess to give all, it is death to save some; he lies to the holy Ghost, that defalks from that which he engaged himselfe to bestow.

It mainly concernes us therefore to looke carefully in the first place, to what we vow, and to our intentions in vowing, and to see that our vow be not rash and unadvised, of things either triviall, or unlawfull, or impossible, or out of our power to performe; for every Vow is a Promise made to God; and to promise unto that great and holy God, that which either we cannot, or ought not to doe, what

what is it other than to mock and abuse that Sacred Majesty, which will not hold him guiltlesse that taketh his name in vaine? It is the charge to this purpose of wise *Solomon*, *Be not rash with thy mouth, and let not thine heart be hasty to utter anything before God, for God is in heaven, and thou upon earth, therefore let thy words be few,* Ecclesi 3.2.

Your vow therefore must be either of things morally good, for the quickening you in that duty which you are bound to doe: or of things indifferent in themselves, the refraining, or doing whereof, may tend either to the restraint from sinne, or the furtherance of your holy obedience: As a man that findes his brains weak, and his inclination too strong to pleasing liquor, bindes himselfe by a vow to drinke no wine save onely at Gods Table: or a man that findes himselfe apt to be miscarryed by his appetite,

confines himselfe by his vow to one dish, or to one meale for the day : or a man that findes himself given to the pleasure of gaming, to the losse of his time, and the weakning of his estate, curbes himselfe by his vow never to play for money : or a man that findes his prayers weak, and his flesh rebellious, vowes to tame his unruly desires, and to stir up his duller devotions by fasting.

And as the matter of your vow must be carefully regarded ; so also your intentions in vowing ; for if you vow to doe good to an ill end, your thanke is lost, and danger of judgement incurred : as if you vow to give almes for vaine-glory, or ostentation : or, if God shall prosper your usurious, or monopolizing project, you will build an hospitall; your vow is like to be so accepted, as the story tells us, the prayers were, of that bold *Curtizan*, who coming to the shrine
of

of S. *Thomas* of * *Canterbury* (as that traitour was stiled) devoutly beg'd, that through the intercession of that Saint, she might be graced with so winning a beauty, that might allure her paramours to a gainfull courting of so pleasing a Mistresse, when suddenly (as my author tells me) she was stricken blinde: and certainly, so it might well be; for if a supposed Saint were invoked, it was God that was highly provoked by the sinfull petition of a shamelesse harlot: and it was most just for him to revenge it; and so we may well expect it shall be with whosoever shall dare to make use of h's sacred name to their owne wicked or unwarrantable purposes.

Since therefore our vowes must be for their matter (as Casuists well determine) *De meliore bono*, and for intentions, holy and directed onely to good; it plainly appeares that many

* Bromiard, sum. predict.

idle purposes, promises, resolutions, are wont to passe with men for vows, which have no just claime to that holy title : One sayes he vowes never to be friends with such a one that hath highly abused him; another, that he will never come under the roofof such an unkinde neighbour : one that he will drinke so many healths to his honoured friend; another that he will not give the wall or the way to any passenger : one that he will never weare suit but of such a colour; another that he will never cut his haire till such an event; These, and such like may be foolish, unjust, ridiculous selfe engagements, but vows they are not, neither therefore do bind the conscience, otherwise than as *Sampsons* cords, and wirhes, which he may break as a thred of tow, *Iudg.* 16.9.12.

But as for true vows, certainly they are so binding, that you shall sin hainously

hainously in not performing them : It is not better than dishonesty to fail in what we have promised to men ; but to disappoint God in our voves, is no lesse than sacriledge : That of *Solomons* is weighty, *Eccles. 5.4,5,6.* *When thou vowest a vow unto God, deferre not to pay it, for he hath no pleasure in foolcs ; pay that which thou hast vowed : Better it is that thou shouldst not vow, than that thou shouldst vow and not pay it : Suffer not thy mouth to cause thy flesh to sin, neither say before the Angel that it was an errour ; wherefore should God be angry at thy vow, and destroy the worke of thine hands ?* If therefore a lawfull and just vow have passed your lips, you may not be false to God, and your selfe in not keeping it.

But if it shall so fall out, that there proves to be some maine inconvenience or impossibility in the fulfilling of this your solemne promise unto

God, whether through the extreme prejudice of your health, and life, or the over-ſwaying difficulty of the times what is to be done; ſurely as under the law (*Numb. 30. 3, 4, 5.*) it was left in the power of the parent to over-rule the vow of the child, ſo I doubt not but under the Goſpel, it is left in the power of your ſpirituall fathers, to order, or diſpenſe with the performance of thoſe vows, which you would, but cannot well fulfill: neither was it ſpoken in vaine, nor in matter of ſins onely, which our Saviour in way of authorization, ſaid to his Apoſtles and their ſucceſſours, *Whatſoever ye ſhall binde on earth, ſhall be bound in heaven, and whatſoever ye ſhall looſe on earth ſhall be looſed in heaven. Mat. 18. 18* In this caſe therefore, I ſhould adviſe you to make your addreſſe to your ſpirituall paſtor, and freely to lay open your condition before him, and humbly to ſubmit
your

your selfe to his fatherly directions in that course, which shall be found best and safest for your soule: Think it not safe in a businesse of so high nature to relye upon your owne judgment, and to carve out your own satisfaction; but regard carefully what God hath said of old, *The priests lippes should keep knowledge: and they should seeke the law at his mouth: for he is the messenger of the Lord of hosts.* Mal. 2. 7.

CASE V.

Whom may we justly hold an Heretick; and what is to be done in the case of Heresie?

There is no one point wherein the Church of God hath suffered more, than in the mis-understanding of this question; How many thousand innocents, have in these latter

ages of the Church perished in this unhappy quarrell? yea, how many famous Churches have beene most unjustly thunder-struck with direfull censures of Excommunication down to the pit of hell, upon pretence of this crime, which have bin lesse guilty than their Anathematizers? And even amongst our selves, how apt we are to brand one another with this hatefull mark where there is no true merit of such a reproach?

It much imports us therefore to know who may be deservedly thus stigmatized by us: I have elsewhere somewhat largely insisted on this theme; whither I might spare some lines to referre you; But, in short, thus: To let passe the originall sense, and divers acceptions of the word, An heresie is no other than an obstinate errour against the foundation; All truths are precious, but some withall necessary; All errours are
faulry,

faulty, but some damnable; the nay-nousnesse of the error is according to the worth of the truth impugned; There are Theologicall verities fit for us to know and believe; there are Articles of Christian faith needfull to be known and believed; There are truths of meet and decent superstructure, without which the fabrick may stand; there are truths of the foundation so essentiall, as that without them it cannot stand: It is a maim to the house if but a tile be pulled off from the roose, but if the foundation be razed, the building is overthrown: this is the endeavour and act of heresie.

But now the next question will be, what doctrines they are which must be accounted to be of the Foundation; Our countrey-man *Fisher* the Jesuite, and his Associates wil tell you roundly, that all thole things, which are defined by the Church to be believed,

ved, are * fundamentall : A large ground-work of faith : Doubtlesse the Church hath defined all things contained in the scripture, to be believed; and theirs (which they call Catholick) hath defined all those Traditionall points, which they have added to the Creed, upon the same necessity of salvation to be believed; now if all these be the foundation, which is the building? what an imperfect fabrick doe they make of Christian Religion; all foundation, no walls, no roofe? Surely it cannot, without too much absurdity, be denied, that there is great difference of Truthes, some more important than others; which could not be, if all were alike fundamentall : If there were not some speciall Truthes, the beliefe whereof makes, and distinguisheth a Christian, the Authors of the Creede Apostolick (besides the

* Relat. of the third confer. p. 6. 1

other Symboles received anciently by the Church) were much deceived in their aime: He therefore that believes the holy Scriptures (which must be a principle presupposed) to be inspired by God; and as an abstract of the chiefe particulars thereof, professeth to believe and embrace the Articles of the Christian faith, to regulate his life by the law of Gods commandements, and his devotion by the rule of Christ prescribed; and lastly to acknowledge and receive the Sacraments expressly instituted by Christ; doubtlesse this man is by profession a Christian, and cannot be denyed to hold the foundation; and whosoever shall wilfully impugn any of these, comes within the verge of Heresie: wilfully, I say, for meere error makes not an heretick; if out of simplicitie, or grosse ignorance, a man shall take upon him to maintaine a contradiction to a point of faith, being

ing ready to relent upon better light, he may not be thus branded : evicti-
on and contumacy must improve his
error to be hereticall. The Church of
Rome therefore hath beene too cru-
elly-liberall of her censures this way,
having bestow'd this livery upon ma-
ny thousand Christians whom God
hath owned for his Saints : and upon
some Churches more Orthodoxe
than her selfe, presuming upon a
power (which was never granted her
from heaven) to state new articles of
faith, and to excommunicate and
barre all that shall dare to gainsay her
oracles : Whereas the great Doctor
of the Gentiles hath told us from the
spirit of God, that there is but *one*
Lord, one faith, one baptisme ; (Ephes.
4.5.) and what faith is that ? S. *Jude*
tells us : *Jude 3. The faith that was*
once delivered the Saints ; so that as
well may they make more reiterati-
ons of Baptisme, and multiplicities
of

of Lords, as more faiths than one : some explications there may be of that one faith, made by the Church, upon occasion of new-sprung errors, but such, as must have their grounds from fore-written truths, and such, as may not extend to the condemnation of them whom God hath left free : new articles of faith they may not be, nor binde farther than God hath reached them.

Hereticks then they are, and onely they, that pertinaciously raze the foundation of the Christian faith; what now must be done with them ? surely, first, if they cannot be reclaimed, they must be avoided : It is the charge of the beloved Disciple to the elect Lady, 2 *John* v. 10. *If any man come unto you and bring not (that is, by an ordinary Hebraisme, opposes) this doctrine, receive him not into your houses, neither bidde him God speede;* But the Apostle of the Gentiles goes
yet

yet higher; for writing to *Titus* the great Super-intendent of *Crete*, his charge is, Tit. 3. 10. *A man that is an Heretick, after the first and second admonition reject.*

Now, when wee compare the charge with the person, we cannot but finde that this rejection, is not a meer negative act, of restraining company, but a positive act of censure, so as he, who had power to admonish, had also power to reject in an authoritative, or judicatory way: He sayes then, *Devita*, reject or avoid, not (as *Erasmus* too truly, but bitterly scoffes the Romish practise) *De vita tolle*: This of killing the heretick, as it was out of the power of a spirituall supervisor, so was it no lesse farre from the thoughts of him that desired to come in the spirit of meekness: Fagots were never ordained by the Apostle for arguments to confute Hereticks; this bloody Logick and
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Divinity was of a much later brood, and is for a *Dominick*, not a *Paul* to owne: for certainly faith is of the same nature with love, it cannot be compelled, perswasions may move it, not force: These intellectuall sinnes must look for remedies of their owne kinde; But if either they be (as it is often) accompanied with damnable blasphemies, against God, whether in his essence, or attributes, or the three incomprehensible persons in the all-glorious Deity, or the blessed mediator betwixt God and man Jesus Christ, in either of his natures; or else, shall be attended with the publique disturbances and dangerous distempers of the Kingdome, or State wherein they are broached, the Apostle's wish is, but seasonable, in both a spiritual and a bodily sense; Gal. 5. 12. *Would to God those were cut off that trouble you*: In the mean time, for what concernes your selfe, if you know

know any such, as you love God, and your soules, keepe aloofe from them, as from the pestilence. * *Epiphanius* well compares heresie to the biting of a mad dog, which as it is deadly, (if not speedily remedied) so it is with all dangerously infectious, not the tooth onely, but the very foame of that envenomed beast carries death in it; you cannot be safe, if you avoid it not.

* *Epiphani. hazel. l. 1.*

CASE VI.

Whether the lawes of men doe binde the Conscience, and how far we are tyed to their obedience.

BOth these extreames of opinion concerning this point, must needs bring much mischief upon Church and Kingdome: Those that absolutely hold such a power in humane lawes make themselves slaves to men: Those

Those that deny any binding power in them, run loose into all licentiousness: Know then that there is a vast difference betwixt these two; To bind the conscience in any act, and to bind a man in conscience to do or omit an act: Humane laws cannot do the first of them; the latter they may, and must doe: To binde the conscience is to make it guilty of a sin in doing an act forbidden, or omitting an act enjoined as in it selfe such: or making that act in it selfe an acceptable service to God, which is commanded by men: Thus humane lawes cannot bind the conscience: It is God onely, 1 *John* 3. 21. who, as he is greater than the Conscience, so hath power to binde or loose it: *Esay* 31. 22. It is he that is the onely Law giver to the Conscience: *Jam.* 4. 12. Princes and Churches may make lawes for the outward man; but they can no more binde the heart, than they can
make

make it; In vain is that power, which is not inabled with coercion, now what coercion can any humane power claim of the heart, which it can never attain to know? the spirit of man therefore is subject onely to the father of spirits, who onely sees and searches the secrets of it, and can both convince, and punish it.

Besides, well did penitent *David* know what he said, when he cryed out, *Against thee onely have I sinned*: *Psal.* 51. he knew that sinne is a transgression of the law, and that none but Gods law can make a sin: men may be concerned, and injured in our actions, but it is God who hath forbidden these wrongs to men, that is sinned against, in our acts of injustice and uncharitablenesse: and who only can inflict the spirituall (which is the highest) revenge upon offenders. The charge of the great Doctor of the *Gentiles* to his *Galatians*, was
Gal.

Galat. 5. 1. Stand fast in the liberty wherewith Christ hath made us free, and be not intangled againe in the yoke of bondage. What yoke of bondage was this, but the law of Ceremonies? What liberty was this, but a freedom from the bondage of that law? And certainly if those ordinances, which had God for their author, have so little power to bind the conscience, as that the yoke of their bondage must be shaken off, as inconsistent with Christian liberty; how much less is it to be indured, that we should be the servants of men, in being tyed up to sin by their presumptuous impositions?

The lawes of men therefore doe not, ought not, cannot bind your conscience, as of themselves; but, if they be just, they binde you in conscience to obedience: They are the words of the Apostle to his Romans, *Rom. 13. 5. Wherefore ye must needs be subject,*

ject; not onely for wrath, but also for conscience sake. However then their particuler constitution in themselves put no speciall obligation upon us, under paine of sinne, and damnation; yet in a generall relation to that God, who hath commanded us to obey authority, their neglect or contempt involves us in a guilt of sin: All power is of God, that which the supreme authority therefore enjoyns you, God enjoyns you by it, the charge is mediately his, though passing through the hands of men.

How little is this regarded, in these loose times, by those lawlesse persons, whose practises acknowledge no soveraignty but titular, no obedience but arbitrary, to whom the strongest laws are as weapons to the *Leviathan*, who esteemes Iron as straw, and Brasse as rotten wood, Job 41. 27.

Surely had they not first cast off their obedience to him that is higher

er than the highest, they could not without trembling heare that weighty charge of the great God of Heaven, Rom. 13. 1. *Let every soule be subject to the higher powers: For there is no power but of God; and the powers that be, are ordained of God: 1 Pet. 2. 13. Submit your selves to every Ordinance of man for the Lords sake;* and therefore should be convinced in themselves, of that awe, and duty, which they ow to Sovereignty, and know and resolve to obey God in men, and men for God.

You see then how requisite it is, that you walk in a middle way betwixt that excessive power, which flattering Casuists have beene wont to give to Popes, Emperours, Kings, and Princes in their severall jurisdictions, and a lawlesse neglect of lawfull authority: For the orthodox, wise, and just moderation whereof, these last ages are much indebted to
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the learned and judicious Chancel-
lour of *Paris* *, *John Gerson*, who
firſt ſo checked that over-flowing
errour of the power of humane uſur-
pation (which carried the world be-
fore it) as gave a juſt hint to ſucced-
ing times, to draw that ſtreame into
the right channell, in ſo much as
† *Dominicus à Soto* complains great-
ly of him, as, in this, little differing
from the *Lutheran* hereſie: But in
the way which they call hereſie, we
worſhip the God of our Fathers, ren-
dring unto *Cesar* the things that are
*Cesar*s, and unto God thoſe things that
are Gods; yeilding our bodyes to
Cesar, *Act. 24. 14.* reſerving our ſouls
for God: tendring to juſt Lawes
our active obedience, to unjuſt, paſ-
ſive.

But in the meane time, farre be it

* *Tract. de Vit. ſpec. lect. 4. Cit. Dom. à Soto ut
infra.* † *Gersonis poſitio parum diſtat ab hereſi Luth-
erana. Dominic. à Soto De Jure, &c. l. 1. qu. 6.*

from

from us to draw this knot of our obligation harder, & closer then authority it self intends it : What ever Popes may doe for their Decrees, certainly good Princes never meant to lay such weight upon all their lawes as to make every breach of them (even in relation to the authority given them by God) to be sinful.

Their lawes are commonly shut up with a sanction of the penalty imposed upon the violation : There is an *obedientia bursalis*, (as, I remember, *Gerson* calls it,) an obedience, if not of the person, yet of the purse; which Princes are content to take up withall : we have a world of sinnes (God knowes) upon us in our hourly transgressions of the royall lawes of our maker; but woe were us, if wee should have so many sins more, as we break statutes : In penall lawes, where scandall or contempt finde no

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place,

place, humane authority is wont to rest satisfied with the mulct paid, when the duty is not performed.

Not that we may wilfully incur the breach of a good law, because our hands are upon our purse-strings ready to stake the forfeiture; This were utterly to frustrate the end of good lawes, which doe therefore impose a mulct that they may not bee broken; and were highly injurious to soveraign authority, as if it sought for our money, not our obedience, and cared more for gain then good order; then which there cannot be a more base imputation cast upon government: As then we are wont to say in relation of our actions to the lawes of God; that som things are forbidden because they are sinfull, and some things are sinfull because they are forbidden, so it holds also in the lawes of men; som things are forbidden because they are justly offensive;

offensive; and som other things are only therfore offensive because they are forbidden; in the former of these we must yield our careful obedience out of respect even to the duty it self; in the latter, out of respect to the will of the law-giver; yet so, as that if our own important occasions shall enforce us to transgress a penall law, without any affront of authority or scandall to others, our submission to the penalty frees us from a sinfull disodience.

CASE VII.

Whether Tithes bee a lawfull maintenance for Ministers under the Gospel; and whether men bee bound to pay them accordingly.

AS the question of *Mine* and *Thine* hath ever embroyled the world; so this particular concerning

tithes hath raised no little dust in the Church of God; whiles some plead them in the precise (*quota parte*) due & necessarie to be paid, both by the law of God, and nature it self; others decry them as a judaicall law; partly ceremoniall, partly judiciall; and therefore either now unlawfull, or at least neither obligatory, nor convenient.

What is fit to be determined in a businesse so over agitated; I shall shut up in these ten propositions.

1. The maintenance of the legall ministry allowed and appointed by God was exceeding large and liberall.

Besides all the tithes of corn, wine oyle, herbs, herds, flocks; they had forty eight cities set forth for them, with the fields round about them, to the extent of two thousand cubits every way: they had the first fruits of wine, oyle, wool, &c. in a large
pro-

proportion; he was held to be a man of an evil eye that gave lesse then the sixtith part: They had the first born of cattle, sheep, beeves, goats; and the price of the rest, upon redemption: even the first-born of men must ransom themselves at five shekels a man; They had the oblations and vowes of things dedicated to God: They had the ample loaves (or * cakes rather) of shew-bread, and no small share in meat-offerings, sin-offerings, trespasse-offerings, heave-offerings, shake-offerings; of sacrifices eucharistical they had the brest and shoulder; of other, the shoulder and the two cheekes; yea the very burnt offerings afforded them an hide: Besides all these, all the males were to appeare before the Lord thrice a year; none were exempted (as their Doctors tell us) but ser-

* Ten hand breadths long, five broad, seven fingers high.

vants, deaf, dumb, idiots, blind, lame, defiled, uncircumcised, old, sick, tender and weak, not able to travel, and no one of these which came up might appeare empty-handed.

What do I offer to particularize? there were no less then twenty four gifts allotted to the Priests, expressly in the law; the severals wherof who so desires to see, may finde in the learned and profitable Annotations of master *Ainsworth* *, out of *Maimonides*.

2. We can have no reason to imagine, that the same God who was so bountifull in his provisions for the legall ministry, should bear lesse respect to the Evangelicall; which is far more worthy and excellent then the other; justly therefore doth *S. Paul* argue from the maintenance of the one, a meet proportion for the fit sustentation of the other, *1 Cor. 9. 13.*

H. Ainsworth in Lev. 24 9. ex Maimonide

3. It

3. It is not fit for Gods ministers to be too intent to matter of profit; their main care must be the spiritual proficiency of the soules of their people; the secular thoughts of outward provisions must come in only on the by; but howsoever they may not be intangled in worldly affaires, yet they ought in duty to cast so much eye upon these earthly things as may free them from neglect; It is to *Timothy* that *S. Paul* writes, that if any man provide not for his own, & especially for those of his own house he hath denied the faith, & is worse then an infidell. 1 *Tim.* 5. 8.

4. Under the law the tenth part was precisely allotted by the owner of all things, for the maintenance of the sacred Tribe; and if the wise and Holy God had not found that a meet proportion for those that served at his Altar; he had either pitched upon some other, or left it arbitrary; yea

cullus, that hee therefore grew up to so vast an estate, because he still devoted the tithe of his fruits to *Hercules*: And * *Pliny* tells us that when they gathered their Frankincense, none of it might be uttered till the Priest had the tithe of it set forth for him.

5. There can be no good reason given, why we may not observe the very same rate of proportion in laying out the maintenance of the ministry under the Gospel; and if these rules and examples bee not binding, (since Religion consisteth not now in numbers at all; yet there is no cause why Christian Kingdoms, or Commonwealths may not settle their choice upon the same number, and quantity with both Jewes and Gentiles.

6. The nationall lawes of this kingdom have set out the same pro

* *Plin.* l. 12. *Bongus* de num. Myster. num. 10

portion of tenths for this purpose; If therefore there were no other obligation from the law of God or of the Church, nor any precedents from the practise of the rest of the world, yet in obedience to our municipall lawes, we are bound to lay forth the tenth part of our increase to the maintenance of Gods service; and that tenth is as truly due to the minister as the nine parts to the owner.

7. Since the tenth part is in the intention of the law both civill and ecclesiasticall, dedicated to the service of God; and in the meer intuition thereof, is allotted to Gods ministers, there can be no reason why it can be claimed, or warantably received by Lay persons, for their proper use & behoof; so as this practise of Impropriation, which was first set on foot by unjust and sacrilegious Bulls from Rome, is justly offensive both to God and good men; as mis-deriving the well-

well-meant devotions of charitable and pious soules into a wrong channell. Nothing is more plaine then that tithes were given to the Church and in it, to God; how therefore that which is bequeath'd to God may be alienated to secular hands; let the possessors look?

8. Let men be tied to make good the Apostles charge (since the legall rate displeases) and it shall well satisfie those that wait upon Gods services under the Gospel; The charge of the Apostle of the Gentiles, is: *Let him that is taught in the word communicate to him that teacheth, in all good things, Gal. 6.6.* whereto hee adds, *ver. 7. Be not deceived, God is not mocked.* The charge is serious, and binding: and the required communication is universall; and that with a grave Item of Gods strict observation of performance: we may not think to put it off with *Ambroses* mispointed

pointed reading, of referring the *all good things* to the teaching, (a conceit ſenſibly weak, and miſconſtructive;) nothing is more evident then that it hath relation to the communicating; wherein (for ought I ſee) God intends a larger bounty to the Evangelicall miniſtery then to the legall; where all is to be communicated, what is excepted? All, not exclusive of the owner; but imparted by the owner; Let this bee really done, there will bee no reaſon to ſtand upon the Tenth.

9. But that this may be accordingly done, there is no law that requires a meer arbitrarineſſe in the communicators: the duty of the teacher is punctually ſet downe, and ſo well known that the meanest of the people can check him with his neglect: and why ſhould wee thinke the reciprocal duty of the hearer fit to bee left looſe and voluntary: yet ſuch
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an apprehension hath taken up the hearts of too many Christians as if the contributions to their ministers were a matter of meer almes; which as they need not to give, so they are apt, upon easy displeasures, to upbraid: But these men must be put in minde of the just word of our Saviour; *The laborer is worthy of his wages*: The ministry signifies a service; a publique service at Gods Altar; whereto the wages is no lesse due, then the meat is to the mouth of him that payes it; No man may more freely speak of tithes then my selfe, who receive none, nor ever shall do: Know then ye proud ignorants, that call your Ministers your almes-men, and your selves their Benefactors, that the same right you have to the whole, they have to a part; God and the same lawes that have scuffed you in your estates, have allotted them their due shares in them; which

which without wrong ye cannot detract. It is not your charity but your justice which they presse for their owne: Neither think to check them with the scornfull title of your servants; servants they are indeede, to Gods Church, not to you; and if they doe stoop to particular services for the good of your souls, this is no more disparagement to them, then it is to the blessed Angels of God, to be ministring spirits, *Heb. 1. 14.* sent forth to minister for them who shall be heires of salvation.

Shortly, it is the Apostles charge rarified in heaven, that they which labour in the word and doctrine should be remunerated with double honour; that is not formall of words and complements, but real of maintenance; which he laies weight upon his *Timothy* to enioyn, *1. Tim. 5. 17.*

10. And surely how necessary it is that we should bee at som certainty
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in this case, and not left to the meer arbitrary will of the givers, it too well appears in common experience; which tell us how ordinary it is, where ministers depend upon voluntary benevolences, if they doe but upon som just reproofe gall the conscience of a guilty hearer; or preach som truth which dis-relishes the palate of a prepossessed auditor, how he straight flies out; and not only withholds his own pay, but also withdrawes the contributions of others: so as the free-tongued teacher must either live by ayre, or be forced to change his pasture: It were easy to instance, but charity bids mee forbear.

Hereupon it is, that these sportulary preachers are faine to sooth up their many masters, and are so gagged with the feare of a starving displeasure, that they dare not be free in the reprehension of the daring sins of their

their uncertain benefactors; as being charmed to speak either *placencia* or nothing. And if there were no such danger in a faithfull and just freedom, yet how easy is it to apprehend, that if even when the laws enforce men to pay their dues to their ministers, they yet continue so backward in their discharge of them: how much lesse hope can there be, that being left to their free choyce, they would prove eyther liberall or just in their voluntary contributions.

Howsoever therefore in that innocent infancy of the Church, wherein zealous Christians, out of a liberall ingenuity were ready to lay downe all their substance at the Apostles feet, & in the primitive times immediately subsequent, the willing forwardness of devout people tooke away all need of rayfing set maintenances for Gods ministers, yet now, in these depraved and hard hearted times

times of the Church, it is more then requisite, that fixed competencies of allowance should by good lawes be established upon them; which being done by way of tithes in those countries wherein they obtaine, there is just cause of thankfulness to God for so meet a provision, none for a just oppugnation.

CASE VIII.

whether it bee lawfull for Christians where they find a countrey possessed by savage Pagans and Infidels, to drive out the native inhabitants; and to seize, and enjoy their lands, upon any pretence; and upon what grounds it may be lawfull so to doe.

WHat unjust and cruel measure hath been heretofore offered by the Spaniard to miserable Indians, in this kind, I had rather you should

should receive from the relation of their own Bishop, *Bartholomæus Casa* then from my Pen.

He can tell you a sad story of millions of those poor savages made away to make room for those their imperious successors; the discovery of whose unjust usurpation, procured but little thanks to their learned professors of *Complutum* and *Salamanca*: Your question relates to our owne case; since many thousands of our nation have transplanted themselves into those regions, which were prepossessed by barbarous owners: As for those countries which were not inhabited by any reasonable creatures, (as the *Bermudas*, or Summer-Islands; which were only peopled with Hogs and Deer, and such like brute cattle) there can be no reason why they should not fall to the first occupant; but where the land hath a known master the case must vary:

For

For the decifion whereof some grounds are fit to be laid.

No nation under heaven but hath fom Religion or other, and worships a God fuch as it is , although a creature much inferiour in very nature to themselves; although the worft of creatures, evil fpirits; and that religion wherein they were bred, through an invincible ignorance of better, they esteem good at leaft.

Dominion and propriety is not founded in Religion , but in a naturall and civill right ; It is true that the faincs have in Chrift, the Lord of all things, a fpiritual right in all creatures; *all things are yours,* (faith the Apostle) *and you are Christs, and Chrift is Gods :* but the fpirituell right gives a man no title at all to any naturall or civill poffeffion here on earth ; yea Chrift himfelfe, though both as God, and as Mediator , the whole world were his, yet hee tells

Pilate

Pilate, My kingdom is not of this World; neither did he (though the Lord Paramount of this whol earth) by virtue of that transcendent sovereignty put any man out of the possession of one foot of ground which fell to him, either by birth, or purchase; Neither doth the want of that spirituall interest debar any man from a rightfull claim and fruition of these earthly inheritances.

The barbarous people were lords of their owne; and have their Sagamores; and orders, and formes of government under which they peaceably live, without the intermedling with other nations.

Infidelity cannot forfeit their inheritance to others; no more then enmity professed by Jewes to Christian Religion, can escheat their goods to the Crownes under which they live; yea much lesse: for those Jewes, living amongst Christian people

people, have, or might have had meanes sufficient to reclaime them from their stubborn unbeleeffe, but these savages have never had the least overture of any saving helps towards their conversion: they therefore being as true owners of their native inheritances, as Christians are of theirs, they can no more be forced from their possessions by Christians, then Christians may be so forced by them: certainly, in the same terms wherein they stand to Christians, do also in their judgement, Christians stand to them; and if it would seem hard to us, that an inundation of Pagans should (as heretofore it hath done) break in upon us, and drive us out of our native possessions, how could it seem less unjust in us to them?

Their Idolatries, and sins against nature are hainous and abominable and such as for which God of old
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condemned the seven nations to an utter extirpation; But what Commission have wee for their punishment? Could we shew such a patent in this case as the Israelites had for their warres against *Ameleck*, and those neighbouring heathens, all were sure: But you know who said, *What have I to do to judge them that are without?* 1 Cor. 5. 12. And if hee may not be a Judge, who may be an executioner.

Refusall of Christianity can be no sufficient ground of either invasion, or expulsion, sith violence is not the appointed way for plantation of the faith; which must be perswaded, and not compelled; that sentence therefore of Pope * *Gregory*; *Iustum*

* *Greg. cap. Pervenerabilem. & cap. Si non. 23. q. 4. Iustum sanctumque esse bellum quod infidelibus à Christianis inferitur, ut eis imperio subditis prædicari possit Christi Evangelium, ne si imperio subditi non sint, prædicationi & conversioni eorum qui crediderint impedimento esse possint.*

sanctumque

sanctumque esse bellum, &c. (That it is a just and holy war which is by Christians made against Infidels, that they being brought under subjection the Gospel of Christ might be preached unto them; lest that if they should not be subjected, they might be an hindrance to preaching, and to the conversion of those that would beleeve;) is surely either not out of the chayre, or beside the cushion; and better beseems a successor of *Romulus*, then of *Peter*: I may not omit to acquaint you how hotly this main question was disputed by Spanish & Italian Divines upon the very first entrance of this litigious usurpation; At which time Pope *Alexander 6.* (*Anno 1493.*) gave his large Decretory Bull to *Ferdinand* king, and *Isabella* queen of *Castile* and *Aragon* for his expedition against the barbarous Indians of the then newly discovered world: *Genesius Sepulveda*, a learned Spaniard

Spaniard writ then, in defence and incorage-ment of this holy invaſion, a Dialogue, which hee called *Democrates ſecundus*, which was publiſhed at *Rome*, by the procurement of *Antonius Auguſtinus*, Auditor of the Palace; which no ſooner came abroad, then it was eagerly ſet on, by the Divines both of *Italy* and *Spaine*; amongſt theſe latter, the Doctors of *Salamanca*, adde the *Complutenſes*; and above them *Antonius Ramirus* Biſhoppe of *Segovia* falls ſoule upon that offensive diſcourſe, which *Geneſius* would faine have vindicated by an Apology, ſet forth to that purpoſe; but how inſufficiently, it were eaſie to ſhew, if it were as needfull: But to make the matter good, hee thinks to back himſelfe by the authority of great and famous perſons, both counſellors, and Doctors, by him cited; and above all by

by that loud Bull of * *Alexander* ; wherein yet, for ought I see, the charge which is laid on those Princes is only to reduce the people living in those Islands and countries to receive Christian Religion; which we may well apprehend more likely to be done by other means then by the sword.

After much agitation it pleased the King of *Spaine*, to require the judgement of † *Franciscus à Victoria*, the famous professor of Divinity at *Salamanca*, concerning this so weighty affaire; which he hath published with such wildome and moderation, as so great a businesse required; stating the question aright on both sides; both shewing the insufficiency of the received grounds of that Indian expedition, and directing to those

* *Decret & indultum Alex. 6. super expeditione, &c. Populos in ejusmodi insulis & terris, gentes ad Christianam Religionem inducere velitis & debetis, &c.* † *Franc. a Victoria Relect. de Indis.*

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just

just motives, & rules of proceedings herein, as might bee, in such a case, justifiable; to which grave and solid discourse of his, you may, if you please, bee referred for further satisfaction.

Onwards, I shall draw forth some few of such considerations from him as may serve for my present purpose.

First therefore it is lawfull for Christians to travell into any countrey under heaven, and as strangers, to stay there, without any wrong done to the natives; A thing allowed by the law of nations derived from the law of nature, by which law it is every where held an inhuman thing to offer ill measure to a stranger. It is the argument that righteous Lot used to the worst of Pagans, the Sodomites; *Only unto these men doe nothing, for therefore are they come under the shadow of my roof.* Gen. 19.8.

And

And it before the division of nations, the earth lay freely open to all passengers without scruple, to travel whither they pleased, surely, that partition was never intended to warrant a restraint; And if nature have made the Sea and all the in-lets of it common, it were very injurious to abridge any nation of the free use of so liberal an element.

Secondly, it is lawfull for us to use trafique with those Infidels, and to interchange comodities with them, and to abide upon their coasts for negotiation, and to fish in their sea, and to take part of those profits which nature hath made common to all comers, And if those Pagans shall oppose us in so warrantable courses, it will be meet for us to tender them al fair satisfaction; perswading them that we intend no harm or prejudice to them in their persons, or estate; but much good to both; labouring

to win them by all courteous demeanor; But if they shall flie out, notwithstanding all our kind indeavors, into a violent opposition of us; setting upon us in a hostile manner, offering to cut our throats in so unjust a quarell, it is lawfull for us to stand upon our defence, and to repell one force with another; and to use all convenient meanes for our security; and if we cannot otherwise be safe, to raise bulwarks or fortifications for our own indemnity; and if we finde our selves over-powred by implacable Savages, to call for the aid and assistance of our friends, and (if the enmity continue and proceed) of our Princes: since the just cause of war is the propulsation of publique injuries; and such injury is as great as barbarous.

But if not so much cruelty of disposition, as feare and suspicion of a strange nation shal arm them against us;

us; our care must bee so to manage our own defence, as may be least offensive to them; & therefore we may not take this occasion of killing their persons, or sacking their townes, or depopulating their countrys; for that in this case they are no other then innocent.

If after all gentle intreaties, courteous usages, and harmlesse self-defence, they shal persist in a malicious hostility, & can by no means be reclaimed from their imperuous onsets; there is now just cause not to deale with them as innocents, but as enemies: and therefore to proceede against them accordingly.

But an higher and more warrantable title, that we may have to deale with these barbarous Infidels, is, for the propagation of Christian Religion; and the promulgation of the Gospel of *Iesus Christ* amongst these miserable savages: For which wee

have good ground from the charge of our Saviour : *Goe preach the Gospell to every creature; Mar. ult.* and he that was in bonds for the name of the Lord Jesus, tels us, *The word of God is not bound; 2 Tim. 2. 9.* not bound, either in fetters, or within limits : Oh that wee could approve to God, and our Consciences, that this is our main motive and principall drift in our western plantations ; but how little appearance there is of this holy care and endeavour, the plaine dealer upon knowledge hath sufficiently informed us ; Although I now heare of one industrious spirit that hath both learned the language of our new-Islanders, and printed some part of the Scripture in it ; and trained up some of their Children in the principles of Christianity : a service highly acceptable to God, and no lesse meritorious of men : The Gospell then may be, must be preached
to

to those heathens, (otherwise they shall perpetually remaine out of the estate of salvation) and all possible meanes must be used for their conversion; but herein I must have leave to depart from *Victoria*, that he holds it lawfull if the savages do not freely permit (but goe about to hinder) the preaching of the Gospell, to raise war against them; as if he would have them cudgeled into Christianity: surely this is not the way: It is for Mahumetans to profess planting religion by the sword; it is not for Christians; It is a just clause therefore that he puts in, that the slaughters hereupon raised may rather prove an hindrance to the conversion of the savages, as indeed it fell out, the poor Indians being by these bloody courses brought into such a detestation of their masters, the Castilians, that they profest they would not goe to heaven if any Spanyards were there.

The way then to plant the Gospel of Christ successfullly among those barbarous soules, must be only gentle, and plausible : first, by insinuating our selves into them by a discreet familiarity, and winning deportment, by an holy and inoffensive living with them; by working upon them with the notable examples of impartiall justice, strict piety, tender mercy, compassion, chastity, temperance & all other Christian virtues, and when they are thus won to a liking of our persons and carriage, they will be then wel capable of our holy counsels; Then will the Christian faith begin to relish with them; and they shall now grow ambitious of that happy condition, which they admire in us : then shall they be glad to take us into their bosoms : and think themselves blessed in our society and cohabitation : Lo this is the true way of Christian conquests; wherein

wherein I know not whether shal be the greater gainer, the victor or the conquered; each of them shall blesse other, and both shall be blessed by the Almighty.

CASE IX.

Whether I need in case of some foule sin, committed by mee, to have recourse to Gods Minister for absolution; and what effect I may expect therefrom.

A Meane would do well betwixt two extremes; the careless neglect of our spirituall fathers on the one side, and too confident reliance upon their power, on the other: some there are that doe so over-trust their leaders eyes, that they care not to see with their own; others dare so trust their own judgement, that they think they may sleight their spiritual

M 5 guides:

guides : there can be no safety for the soul, but in a mid-way betwixt both these.

At whose gyrdle the keyes of the kingdom of heaven doe hang, mee thinks wee should not need dispute, when we hear our Saviour so expretly deliver them to *Peter*, in the name of the rest of his fellowes; and afterwards to all his Apostles, and their lawfull successors in the dispensation of the doctrine and discipline of his Church : In the dispensation of doctrine to all his faithfull Ministers under the Gospell ; In the dispensation of discipline to those that are entrusted with the mannaging of Church-government ; with these latter we meddle not ; neither need we, if we had occasion ; after the so learned & elaborate discourse of the power of the Keyes, let forth by judicious Doctor *Hammond*, to which I suppose nothing can be added. The
former

former is that which lies before us : Doubtlesse , every true minister of Christ, hath by virtue of his first and everlasting commission, two keyes delivered in his hand ; the key of knowledg, and the key of spirituall power : the one, whereby he is enabled to enter and search into, not only the revealed mysteries of salvation, but also, in some sort , into the heart of the penitent ; there discovering (upon an ingenious revelation of the offender) both the nature, quality, and degree of the sinne ; and the truth, validity , and measure of his repentance : The other whereby he may in some sort either lock up the soul under sin, or free it from sinne; these keyes were never given him, but with an intention that he should make use of them upon just occasion. The use that hee may and must make of them is both generall, and speciall : Generall; in publishing the will

will and pleasure of God signified in his word, concerning sinners; pronouncing forgiveness of sins to the humble penitent, and denouncing judgement to the unbelieving, and obdured sinner: In which regard, he is as the Herald of the Almighty, proclaiming war and just indignation to the obstinate; and tendering terms of pardon and peace to the relenting and contrite soule: or rather, as the Apostle stiles him, *2 Cor. 5. 20.* Gods Ambassador offering and suing for the reconciliation of men to God; and if that be refused, menacing just vengeance to sinners.

Speciall, in a particular application of this knowledge and power to the soul of that sinner which makes his addresse unto him: Wherein must be inquired both what necessity there is of this recourse, and what aid and comfort it may bring to the soul.

Two cases there are wherein certainly there is a necessity of applying our selves to the judgement of our spirituall guides; The first is in our doubt of the nature and quality of the fact; whether it be a sin, or no sinne; for both many finnes are so gilded over with fair pretences and colourable circumstances, that they are not to be de cryed but by judicious eyes; and some actions which are of themselves indifferent, may by a scrupulous conscience be mistaken for hainous offences: Whither should we goe in these doubts but to our Counsaile learned in the Lawes of God; of whom God himself hath said by his *Prophet. The Priests lips should keep knowledge; and they should seeke the Law at his mouth; for he is the messenger of the Lord of Hosts. Mal. 2. 7.*

The second is in the irresoluble condition of our souls after a known
fin

ſin committed; wherein the burdened conſcience not being able to give eaſe unto it ſelf, ſeeks for aid to the ſacred hand of Gods Penitentiary here on earth, & there may find it; That is, that which *Elihu*, as upon experience, ſuggelteth unto *Job*, on his dunghill: *Job* 33. 22. *The ſoul of the remorseſed draweth near to the grave, and his life to the deſtroyers: ver. 23. But if there bee a meſſenger (of God) with him, an interpreter, one of a thouſand, to ſhew unto man his uprightneſſe, (and the ſoundneſſe of his repentance) ver. 24. then is (God) Gracious unto him, and ſaith, Deliver him from going down into the pit; I have found a ranſome, &c. ver. 26. Hee ſhall pray unto God; and he will be favorable unto him; and hee ſhall ſee his face with joy. In caſe of ſome dangerous ſickeſſe of the body, wee truſt not our owne ſkill, nor ſome ignorant quackſalvers, but ſeek to a learned
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and experienced Physitian for the prescription of some sure remedies ; whereas, if it be but for a sore finger, or a tooth-ach, we care only to make use of our own receits : And so in civil quarels ; if it be only som sleight brabble, wee thinke to compole it alone ; but if it be som maine question importing our free hold, wee are glad to waite on the stairs of some judicious Lawyer, and to see him for advice : How much more is it thus in the perilous condition of our soules ; which as it is a part farre more precious then its earthly Tabernacle, so the diseases whereto it is subject, are infinitely more dangerous and deadly.

Is your heart therfore embroyled within you, with the guilt of some hainous sin ? labour what you may to make your peace with Heaven ; humble your self unto the dust before the Majesty whom you have offended ;

fended; beat your guilty brest, water your cheeks with your tears; & cry mightily to the father of mercies for a gracious remission; but if after all these penitent endeavours you finde your soule still unquiet; and not sufficiently apprehensive of a free and full forgiveness; betake your selfe to Gods faithfull agent for peace; run to your ghostly Physitian, lay your bosome open before him; flatter not your own condition; let neither feare nor shame stay his hand from probing and searching the wound to the bottome; and that being done, make carefull use of such spirituall applications as shall be by him administered to you: This, this is the way to a perfect recovery, and fulness of comfort.

But you easily grant that there may be very wholsome use of the ghostly counsell of your Minister in the case of a troubled soule; but you doubt

doubt of the validity and power of his absolution; concerning which it was a just question of the Scribes in the Gospell; *Who can forgive sinnes but God only?* Mar. 2. 6. Our Saviour therefore to prove that he had this power, argues it from his divine omnipotence; *He only hath authority to forgive sinnes,* (ver. 7.) that can say to the decrepit paralytick; *Arise, take up thy bed and walke;* (ver. 9.) none but a God can by his command effect this; he is therefore the true God that may absolutely say, *Thy sins be forgiven thee,* (ver. 10.) Indeede, how can it be otherwise? Against God only is our sin committed, against man only in the relation that man hath to God; He only can know the depth of the malignity of sin, who only knowes the soule wherein it is forged; He only who is Lord of the Soule, the God of spirits, can punish the Soule for sinning;

ning; Hee only that is infinite can doome the sinfull soule to infinite torments; He only therefore it must be, that can release the guilty Soule from sin and punishment, If therefore man, or Angell shall challenge to himselfe this absolute power to forgive sin let him be accursed,

Yet withall it must be yeelded, that the blessed son of God spake not those words of his last commission in vaine; *Whose soever sins ye remit, they are remitted unto them; and whose soever finnes ye retaine, they are retained.* John 20.23. neither were they spoken to the then present Apostles only, but in them to all their faithfull successors to the end of the world.

It cannot therefore but be granted, that there is some kind of power left in the hand of Christs ministers, both to remit and retain sin: Neither is this power given only to the
Governors

Governors of the Church, in respect of the censures to be inflicted or relaxed by them, but to all Gods faithfull ministers, in relation to the sins of men: A power not sovereign and absolute, but limited & ministeriall, for either quieting the conscience of the penitent, or further aggravating the conscience of sin and terror of judgement to the obstinate and rebellious: Neither is this only by way of a bare verball declaration, (which might proceed from any other lips) but in the way of an operative and effectuell application, by virtue of that delegate, or commissi- onary authority which is by Christ entrusted with them: For certainly, our Saviour meant in these words to conferre somewhat upon his Ministers, more then the rest of the world should be capable to receive, or perform, The absolution therefore of an authorized person must needs be
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of greater force and efficacy then of any private man, how learned or holy soever; since it is grounded upon the institution and commission of the Sonne of God, from which all power and virtue is derived to all his ordinances: and we may wel say, that whatsoever is in this case, done by Gods minister (the key not erring) is ratified in heaven: It cannot therefore but be a great comfort, and cordiall assurance to the penitent soule to heare the messenger of God (after a careful inquisition into his spiritual estate and true sight of his repentance) in the name of the Lord Jesus pronouncing to him the full remission of all his finnes.

And if either the blessing or curse of a father goe deeper with us, then of any other whosoever; although but proceeding from his own privat affection, without any warrant from above; how forcible shall we esteem
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the (not so much apprecatory, as declaratory) benedictions, of our spirituall Fathers, sent to us, out of Heaven?

Although therefore you may perhaps, through Gods goodnesse, attaine to such a measure of knowledg and resolution, as to be able to give your self satisfaction concerning the state of your soul; yet it cannot be amisse, out of an abundant caution to take Gods minister along with you, and making him of your spirituall Counsaile, to unbosome your selfe to him freely, for his fatherly advice and concurrence: The neglect whereof, through a kinde of cyther strangenesse or mis-conceit, is certainly not a little disadvantageous to the foules of many good Christians. The Romish Laity makes either Oracles or Idols of their Ghostly Fathers; if we make Ciphers of ours, I know not whether we be more injurious

rious to them, or our selves. We go not about to rack your consciences to a forced and exquisite confession, under the pain of a no-remission, but wee perswade you for your owne good, to be more intimate with, and less reserved from, those whom God hath set over you for your direction, comfort, salvation.

CASE X.

Whither it bee lawfull for a man that is not a professed Divine, that is (as we for distinction are wont to call him) for a laick person, to take upon him to interpret the Scripture.

MAny distinct considerations had neede to make way to the answer.

First, it is one thing for a man to interpret Scripture, another thing to take upon him the function of preach-

preaching the Gospell, which was perhaps in your intention ; this is far more large then the other, every mā that preacheth interpreteth the Scripture, but every one that interprets Scripture doth not preach. To interpret Scripture is only to give the sense of a Text ; but to Preach is to divide the Word aright ; to apply it to the Conscience of the hearer ; and in an authoritative way to reprove sin, and denounce judgement against sinners ; to lay forth the sweete promises of the Gospell to the faithfull and penitent ; for the performing whereof there must be a commission to Gods minister from him that sends him ; upon which the Apostle hath pronounced a (*Tis inav*) *Who is sufficient for these things ?*

Secondly, it must bee considered in what nature, & within what compass the interpretation is ; for doubtlesse the just degrees of callings must
be

be herein duly observed; whether in a publique way; as Pastors of congregations; or in a private way, as masters of families; whether in the schooles, in a meere Grammaticall way; or in the Church, in a predicatorie.

Thirdly, it must be considered, as what the calling, so what the gifts are of the interpreter: for surely; meere interpretation doth not depend upon the profession, but upon the faculty of the undertaker; whether he be learned, or ignorant; whether skilfull in languages and arts (which certainly must be required in whosoever would put forth his hand to so holy and great a work, or whether inexpert in both: where these gifts of interpretation, and eminent endowments of learning are found, there can be no reason of restraining them from an exercise so beneficially edificatory to the Church of God:
without

without which the truth of Christian religion had wanted much both of her vigour, and lustre in all generations. How famously is it known that *Origen* before his entring into holy Orders, even at eightene yeeres of his age entred into that great worke of his Catechisings : *Act. 18.24.25.* *Apollos* the Alexandrian was an eloquent man, and mighty in scriptures, and taught diligently the things of the Lord ; yet knew nothing but the Baptisme of John, till *Aquila* and *Priscilla* took him to task, and more perfectly expounded to him the way of God ; and what happy use it pleased God to make of laick hands, for both the defence and propagation of the Gospel, we need no other witnesse then *S. Ferome* ; who hath memoriz'd amongst the primitive Christians, *Aristides*, *Agrippa* ; *Hegesippus* , *Iustine*, *Musanus*, *Modestinus*, both the *Apollonii*, *Heraclius*, *Maximus* , and

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many

many others, whom God raised up amongst the learned laity of those times, to Apologize for Christianity; And in the last foregoing age, how scarce removed out of our sight, are *Laurentius Valla*, both the Earles of *Mirandula*, *Capnio*, *Fagius*, *Erasmus*, *Faber*, and the rest of those famous way-makers to the succeeding restitution of the evangelicall truth: And what a treasure in this kind had the Church of God lost, if it should have missed the learned annotations upon the Scripture, derived to us from the hands of *Mercerus*, *Joseph Scaliger*, *Drusius*, both *Causaubons*, *Tilenus*, *Grotius*, *Heinsius*, *Selden*, and such other expert philologists, never initiated into sacred Orders?

Fourthly, due and serious consideration must be had of the interpretation it selfe, that it bee genuine and orthodox: for there can be nothing in the world more dangerous then to mis-

mis-construe God speaking to us in his Word; and to affixe upon his Divine Oracles a sense of our owne, quite dissonant from the intention of that spirit of Truth: Care therefore must be taken that the intepretation given, be every way conform to the Analogy of faith, and fully accordant to other Scripture; the neglect wherof, through either ignorance or misprision hath bred many foul and perilous solœcismes in Divinity; To give you a taste of too full a dish: In the 18. of *Ecclesiasticus**, where the vulgar reades, *Hee that lives for ever created all things at once*: some, and those no mean ones, of the Ancient, followed also by latter interpreters, have been misled into an ungrounded conceit of an instantany & entire creation of the world, and all the parts thereof, in the first moment of time; whereas the Scripture hath

* Eccles. 18.1. ἐκτίσεν τὰ πάντα καὶ ἡ

expresly and punctually set down the severall six dayes, wherein each part of it was distinctly formed : which those misconstruers are faine to understand of the distinct notifications given to the Angels, concerning this almighty work : and what curious subtleties have beene hereupon raised by our school-Divines, * is more fit to be past over with an unpleasing smile, then to be seriously recounted; whereas the intention of the place, is only to signify that God made all things in the nniversall world, that have any being; intimating not the time of creation, but (as our † Version hath it) the generality of things created.

What advantage the blasphemous Arrians have formerly taken from the mis-interpretation of *Proverbs* 6. 22. where Wisdom is brought in

* *noivn. communiter. Montan.*

† *Esti Annotat. in locum.*

(by the mistaking of som ancients) to say,* *The Lord created me* (in stead of *possessed me*) *in the beginning of his way, before his works of old*, is more worthy of indignation, then any farther prosecution. But most pregnant and notable is the grosse mis-prision of a late famous school-man, *Franciscus d' Arriba*, Confessor to the late Queen Mother of *France*, who to maintain that new way of reconciling that scholasticall difference among the Roman doctors, concerning the effectual aid of Divine Grace, depending or not depending upon free will (about which he had 60 daies disputation with Cardinall *Ascoly* & Cardinall *Bellarmino*; shewing how it might well be maintained without the devises of physicall pre-determinations, or that *scientia media* of our late Jesuites) relies chiefly for his opinion upon that Text of *Esay*

* Prov. 8 22 וְהָיָה. † Vulg. Tra. Esa. 45. 11.

45.11. *Hac dicit Dominus sanctus Israel.* *elus qui fecit ventura*, Thus saith the Lord the holy one of Israel who hath made things to come; following a mis-
 edition of the Vulgar which perverts the sense, by making a wrong stop in the sentence, whereas their owne *Montanus*, & any other that hath but seen the hebrew Text, would read it; *Hac dicit Dominus sanctus Israelis qui fecit eum*; *Ventura* interrogate me: Thus saith the Lord the holy one of Israel; and his maker: Ask me of things to come concerning my sonnes, &c. referring the *ventura*, (things to come) to the following interrogate. So *Poza* the late extravagant Doctor of Spain in the maintenance of his novel opinions against Fathers and Councils, pressed against him, stands upon his defence, out of the Synod of *Constantinople*, *Act. 5.* grounded upon * the

* *Ecclus. 25.9.* Blessed is he that preaches a word unheard of.

words of miscalled *Solomon*; *Beatus qui prædicat verbum inauditum*; corrupting both the Text & the Councell; whereas it should be read, *verbum inauditum obedientis* : and the Councell hath it aright, (*eis dixit in manu* or 70 :) as ours turns it likewise, *well is he that speaketh in the eares of them that will heare* : It were easie to fill a just volume with instances of this kind.

To this purpose it will be requisite to make use of all those helps that may enable an interpreter to understand the Scriptures; whether those that are internal in it self; or external from other supplies : of the former kind are a diligent sifting of the context and inference, and a carefull comparing and conferring of one Scripture with another, for all truths agree with themselves; & this word of God is the Sun that gives us light to see it self External; where it will

be needfull to call both for the aid of arts and tongues; and for the testimonies and judgements of reverend antiquity, and the not-to-be-neglected authority of modern Doctors; and thirdly, a due regard of those golden rules of Interpreting; which are recommended to posterity by the learned Penns of *Clement* of *Alexandria*, *Hierome*, *Augustine*, *Gerson*, *Hyperius*, *Illyricus*, *Jacobus Matthias*, and others; which, as meet for a volume apart, may not expect to finde a roome in so concise a Tractate.

The want and neglect of all which requisites what strange work it must needs make with the simple and unlettered, wee may well conceive, when great Clerks have hereupon bewrayed so foul and palpable miscarriage.

Albinus, the learned master of *Charles* the great, writing upon *John* finding

finding it said of *Judas* that having received the Sop, hee went immediately out; *Et erat nox*; and it was night; puts both together as spoken of *Judas*; He (saith hee) was the night that went out; as Christ is the day that gives knowledge to his disciples, that were day too; so *Judas*, the night, gives knowledge to the Jewes that were night, of a traitrous wickedness, &c.

What work † *Bernard* (who shewed in this, that he saw not all things) makes of *Demonium meridianum*, the noone-day-Devill, in one of his Sermons, is evident to be seene; yet had he been as well seen in language as he was fervent in his devotion; hee had spared that discourse as raised from a meere ungrounded interpretation; there being no Devill in the text; but a phantasme of his deluded imagination: And if I should set

* *Erat autem ipse nox.* † *Psal. 91. 6.* Bern. Ser. 33

forth the descents that our Postillers run upon the names of *Jobs* three daughters, I should seeme to you as apt to sport in so serious a subject; and if I could thinke it worth the labour of gathering up the wilde senses, far-fetcht Allegories, absurd inferences, that ignorant Friers have fastned upon Scripture, it is not a small skin that would containe that Tome.

Surely that man whosoever he be, that would be hoising saile in these deeps of scripture, had neede to bee well ballast, and well tackled, and skilfull in the Compasse, else he will have much adoe to escape a wrack: He that will walk in paths of danger had need to have his eys about him; an hoodwinkt man may easily bee carried against a post: and hee that hath not light enough to see his own way, had need to take heed whom he trusts: Hee that would blind-fold follow

follow those very interpretations which the Church of *Rome* hath commended for authentically, would run into foul and dangerous absurdities: let me single out some few confessed by their owne *Estius*, and *Lucas Bruggensis*; such as are plainly contradictions to Scripture, and doe, as it were, give the lye to Gods spirit. Such is that 2 *Sam.* 8. 18. *Filii autem David sacerdotes erant*; The sonnes of David were Priests: whereas every child knowes that the Scripture frequently tells us none could be priests but of *Aarons* order and tribe; out of *Levies* loins; and that *David* was of the house of *Judah*: the *Septuagint* rightly turns it *δοξαζου* *. Againc who that shall finde it in the Vulgar interpretation: *David desperabat &c.* *David despaired* that he could escap:

* The word in the originall is כהנ' which every man knowes to bee used ordinarily to signifie either *Principes*, or *Sacerdotes*, as *Exo.* 2. 16.

from the face of *Saul* : would not inferre that he utterly diſtrufte Gods affurance, by the prophet, of his future Kingdom; whereas the originall is by *Eſtius* his own confeſſion, *Festinat*, as we alſo turn it, *David made haſte to get away, &c.* 1 Sam. 23. 26. He that ſhould find it reported of one of the ſonnes of *Er*, *qui ſtare fecit ſolem* (hee that made the Sun to ſtand ſtil) would juſtly wonder what kind of man this was, that had been ſo long obſcured from the world, & yet ſhould have don ſo ſtrange a miracle as never was don but by *Joſhua* (1 Chron. 4. 22.) whereas hee that lookes into the text, ſhall finde no mention at all of the Sun; but only of the meer proper name of *Jeckim* the ſon of *Er*.

He that ſhall read in *Job*, where God ſpeakes of the *Leviathan*; *Cum ſublatus fuerit* (i. *Leviathan*) *timebunt Angeli & territi purgabuntur*; when

when he raiseth up himselfe, the Angels shall feare, and being terrified shall bee purged; Job. 41. 25. would sure think this Whale were the Devill, (as som ancients have mistaken him) and may well wonder how the good Angels being celestiall spirits) could be capable of fear; or how the evill Angels could be capable of purging: when the text hath no mention nor thought of * Angels; but only signifying the strength and terriblenesse of the Whale, expressees it in these words; *When he raiseth up himselfe the mighty are afraid; by reason of breakings they purifie themselves.* Solomon was faulty enough in his Idolatry, but he that shall read 1 Kings 11. 5. (in the Vulgar interpretation) that hee went after *Chamosb* the God of the *Moabites*, shall adde one Idoll

* Where doubtlesse אֱלֹהִים was mistaken for אֱלֹהִים. which title is sometimes given to the Angels. 1 King. 11. 5.

more

more to him then we find him guilty of; *Solomon* was in his holy and regular times; 1 *King*. 4. 32. full of heavenly meditations and divine ditties; but hee that should follow the Vulgar interpretation, would fasten upon him almost * four thousand more then ever he owned.

After that *Merab* *Sauls* eldest daughter was given away to *Adriel* the *Meholathite*, 1 *Sam*. 18. 20. contrary to engagement, hee that will follow the Vulgar, must say that *David* straight fell in love with *Michal*, the other sister; whereas the text tells us that *Michal* fel in love with him.

He that should find in the Vulgar construction, that *Saul* sung all the day naked before *Samuel* in *Naioth*, would think his new Prophefying had put him into a merry vein, 1 *Sam*. 19. 24. whereas the text only tells us

* *Quinque milla*, for *mille & quinque*, five thousand, for a thousand and five. † *Cecinit* for *cicidit*.

that

that hee fell down stripped of his wonted clothes.

He that should find in the Vulgar, *Psal. 71. 5. David* reporting of himself [*non novi literaturam*] *I know no learning*, would wonder at the Prophets disparagement of his skill, who had elsewhere professed himself wiser then his teachers; whereas all that he sayes, is * that the mercies & blessings of God upon him have been so many, that he knows not the numbers thereof.

He that should find the 7 Angels in the Revelation *Vestitos lapide; clothed with stone* † *Rev. 15. 6.* would sure think them buried; wheras the Text is, *clothed in pure white linnen.*

And what do you imagine would a plain reader think of that charge of the wise man; *Noli velle mentiri*

* The word is מְרִיבָה *numeris.* † *Rev. 15. 6.* ἄνθρον ἐν ὅσῳ ἀνθρον. *Suid.* ἐνδεσμένους λίθον *Rev. 15. 6.*

omne mendacium ; Bee not willing to lie all manner of lies, *Ecclus. 7.* would hee not straight say : som belike I am allowed to lye ? whereas the words are peremptory even in *Estius* his reading, according to ours ; *Use not to make any manner of lyes.*

Yea that very correction of the Vulgar interpretation which *Brugen-sis* allowes and magnifies, *1 Cor. 15. 51.* with what safety can it passe the judicious ; whiles he reades, *omnes quidem resurgemus, sed non omnes immutabimur* ; *Wee shall all rise again, but we shall not all be changed* : For how can those rise again that never died ? how are those capable of a resurrection, which are only changed ? Whereas the just sense runnes according to our * Version, *We shall not all sleep, but we shall all bee changed.* For those that are found alive at our Saviours second cōming shall not sleep

* ἢ pro οἱ

in death; yet both they and the formerly dead must undergoe a change.

I could utterly weary you with instances; How must he that reades the Apocryphall *Ecclesiasticus*, needs say that this man (how obscure soever in his authority) saw more and cleerer then all the acknowledged Prophets of the old Testament; for hee hath foretold us expressly the very name of our Lord Jesus which none of them ever beforehand published: For hee (*Ecclus. 43. 23.*) speaking of the deep Sea, is read in the Vulgar to say, *Plantavit illum dominus Jesus*; The Lord Jesus planted it: I shame to think what sport a Jew will make of such a grosse mistaking; wherein *mons* (Jesus, is mis-read for) *mons* Islands, so as the right sense is only this; God by his Counsell appeaseth the Deepe, and planteth Islands therein; But I forbear, only if you have too much leisure, you

you may be pleased to cast your eye upon the Margins.

Neh. 6.2. *Percutiamus sedus in vitulis, in campo uno:* for, *in viculis, in campo, Ono Anni nostri sicut aranea meditabuntur*, Psal 90.9 for, as a tale that is told: *Concupiscentia spadonū devirginabit juvenculā*, Ecclus. 20. 4 *super* for *subter*. Gen. 35 8. *Vulnera* for *ulcera*, Exod 9.9. *Disinctum* for *biū tinctum*, Exod 49. 28. *Sanctuarii* for *Sancto atrii*, Levit. 6 16. *Tonsi* for *Tusis*, Levit. 22. 24. *Neque* for *atque*, Levit. 25 11. *Solis*, for *salis*, Deut. 29. 23 *Non fuerit* for *fuerit*. Josh. 2. 18. *Occidentalem* for *Orientalem*, Jos. 12 3. *Hamata* for *Squamata*, 1 Sam. 17. 5. *Vagi habitabunt* for *pagi habitabuntur*, 1 Sam. 27. 8. *Judam* for *Ludā* 2 Sam 6. 20. *Tumulum* for *tumultum*, 2 Sam. 18. 29. *Lapides secudi* for *Sacculi*, Prov. 16. 11. *Ad alia* for *ad alta*, Prov. 26. 2. *Sponsa* for *speciosa*, Cant. 2. 13. *Adultera* for *adulta*, Ecclus. 42. 9. *In fidelem* for *fidelem*, Esa. 17. 10. *Immitantes* for *irritantes*: *Terra* for *ter*. Ecclus. 48. 2, 3. *Obsurduit* for *obsorduit*, Esa. 33. 19. *Imprudentem* for *impudentē*, Esa. 33. 19. *Faunis ficiarius* for *fatuis ficiariis*, Esa. 50 39. *Vinctas* for *tinctas* Ezec. 23. 13. *Ejiciat* for *mittat*. Mat. 9. 38. *Angelus* for *Angulus* Zach. 10. 4. *Servivit* for *servavi*, Ose. 12. 12. *Confessus* for *confusus*, Mar. 8. 38. *Sexta* for *tertia*, Mar. 15. 25. *Mytelem* for *Melita*, Act 28. 1. *Compellebantur* for *Complebantur*. Luk. 8. 23. *Placuerunt* for *Latherunt* Heb 13 2. *Adduxistis* for *addixistis*. Jac. 5 6. *In carne* for *in carcere*, 1 Pet. 3. 19. *Appropinquabit* for *appropinquavit*, 1 Pet. 4. 7. *Tubarum* for *turbarum*, Rev. 19. 1. *De igne Chaldaeorum* for *de ir Chaldaeorum*. Nehem. 9. 7.

In

In these and many more (for I meant to give you but an assay) the mistakes are important, and such as make no small change in the Text; which I have therefore produced that I might let you see how easie it is for a man that takes all things upon trust to be abused by his credulity; and how unsafe it is much more for an unexpert & injudicious person to meddle with the holy Oracles of the Almighty.

The conclusion then must be, that however it may bee lawfull for the eminently learned, either in schooles or families (according as their calling may warrant them) to interpret even difficult Scriptures, and to untie the knots of a Text; yet since not many are thus qualified, and those that are so qualified, if they neglect to follow the prescribed rules may easily miscarry, to the great perill both of their own souls, and others;

I should

I should therefore advise that this may bee the act of but some few choice persons, and of them, with all possible caution; and that ordinary Christians, if they have a desire, besides all fundamentall truths (which are laid down openly and cleerly in the sacred Word of God) to inform themselves in those darker verities, which lie hidden in more obscure Scriptures, to have recourse to their learned and faithfull Pastors; and rather to rest in that light which they shal receive from their well-digested instructions, then to rely upon their own (perhaps confident, but much weaker) judgement.

RESO-

RESOLUTIONS.

The fourth Decade.

Cases Matrimoniall.

CASE I.

Whether the marriage of a Sonne or Daughter without or against the Parents consent may be accounted lawfull.

Matrimony, though not a Sacrament, yet a sacred institution of God, for the comfort and propagation of mankind; is so fruitfull of questions as that * Sanchez the Jesuite hath stuffed

Thom.ẽ Sanchez, Societ. Jcs. Theol. De matrimonio
an

an huge volume with them alone; it were pittie that so many should in that estate be necessary; we meddle not with those secret, and (some of them) immodest curiosities: contenting our selves only with those which meet us every day in the ordinary practise of men: wherof this which you have moved may well challenge the first place: A question wherein I was vehemently pressed in my late western charge, by som persons of greatest eminency in those parts upon occasion of som of their children undutifully carving for themselves in the choice of their matches; The offended parents in the height of their displeasure were very earnest to invalidate & annul the marriage; I gave them in effect the same account of the point, which now I give to you: That this disallowed marriage was one of those things which are unjust and unlawfull to bee done,

done, but being once done are valid.

How unwarrantable and injurious it is in the child to match himselfe without or against the parents consent, there needs no other Judg then the law of nature it self, which teacheth us that the child is no other then the peculiar goods, and living substance of the parent; yea, as some Civilians have taught us to expresse it, he is * *pars viscerum matris*, a part of the mothers bowels; and part of the purest substance of the father; and therefore ought no more to bee exempted from the parents power of disposing, then the very limbs of his owne body; upon this ground it was that by the law of God it was lawfull for the † Jewes, in case of extremity, to sell, as themselves, so their children also to servitude; but to those onely of their owne Nation,

* Jaco. Leonissa. Consil. Matrimon. 49. † Exod. 21. 7. Deut. 15. 12, 13.

and

and in the * law civil there is the like permission, although under certaine conditions; and particularly, in an utter exigency, *Victus causa*; To the latter whereof, som † Expositors hold so strictly, as that they wil not admit this to be don for the redemption of the parent from death, or perpetual bondage; but only to preserve him from affamishing: wherein certainly they are over-strait laced, and too much wedded to syllables; it being questionless the intention of the law to comprehend all equally-pressing necessities; to which they adde that this must be only in the fathers power, and that to a child not emancipated, and left to his owne disposing: It is not in my way to dispute the case with them, take it at the easiest, it sufficiently shewes the great power that nature it self yelds

* L. 2 c. *De patribus qui, &c.* † Covarruv. l. 3. var. c. 14. ex Accursio & aliis. Lef. l. 2. c. 5. Dub 4.

to the parent over the child; By how much stronger then the parents interest is in the child, so much more wrongfull it must needs bee in the child to neglect his parents in finally bestowing himselfe; And if we look into the positive law of † God, wee shall find the child so wholly left to the parents will and disposition, as that he may, at his pleasure, dispense with, or frustrate the vow of his child made to God himselfe.

Neither do the * Roman doctors generally hold otherwise this day in case of an under-age; and some of them extend this power yet further; yet not without a distinction: holding, that after the age of puberty, those vows only are in the mercy of the father, which may be prejudicial to the government of the family, & paternal pow'r; which is sufficient for my purpose in the question in hand.

† Num. 30. 3, 4, 5, 6. * Less. de Jure l. 2. c. 40. du. 14.

O

And

And although those Casuists doe sufficiently doat upon their Mon-
 kery, and the vows thereunto apper-
 taining; yet they ascribe so much to
 the bond of filial duty, as that they
 teach, That a sonne which (his pa-
 rents being in extreme need, and
 wanting his help) enters into a religi-
 Q. ous order; or comes not out of it
 (though professed) when hee might
 be likely by his coming forth to bee
 aidfull to his said Parents, is guilty
 of a sin against the first Commande-
 ment: so as even with them, the re-
 spect to a parent ought to overweigh
 a vow of religion; although consum-
 mate by a solemn profession.

But, that you may not object to
 me the age of the law as therefore
 abrogated because Mosaicall, heare
 what the chosen vessell saies under
 the new law of the Gospel.

* Navar. Enchir. 4. prae. c. 14. n. 14. *Filius qui
 parentibus in extrema necessitate constitutis, &c.*

If

If any man thinke that he behaveth himselfe uncomely towards his virgin, if shee passe the floure of her age, and need so require, let him doe what hee will, hee sinneth not; let her marry: (1 Cor. 7. 36.) Neverthelesse he that standeth stedfast in his heart, having no necessity; but hath power over his owne will, and hath so decreed in his heart that he will keep his virgin, doth well, &c. (ver. 37.) Loe, the Apostle supposeth it in the parents power either to keep his daughter a virgin, or to dispose of her in marriage: she is not her owne, either to hold, or give; but must be altogether ordered by the superior will of a parent: Not, that any force is allowed either way to be used towards the daughter; whether to continue her in a constrained virginity, or to call her against her minde upon a disaffected match; No, that God who disposeth all things sweetly, would have us

doe so too; hee allowes parents to be rulers of their children, but not tyrants: what they doe therefore in this kinde, must be more by counsel then command: and with more sway of love then authority: thus, consulting wisely with the state of times and the childs disposition and abilities of contayning, must the parent either keep his virgin, or labour for the provision of a meete consortship. Thus did the two great Patriarchs of Gods ancient Church, *Abraham* and *Isaac*, provide fit matches for their holy seed; whiles the unholy provided unfit matches for themselves: Thus did their godly issue in all generations take their parents along with them in the choice of meet yoke-fellowes, whiles the godless, whether out of impetuous lust, or stubborn disobedience, affect with *Esau*, *Gen. 28. 6, 7, 8.* to be their owne purveyors, to the great regret, and heart-

heart-breaking of their parents.

Lastly, the latitude that S. Paul gives of the liberty of marriage to all Christians is, *Tantum in Domino; only in the Lord*, 1 Cor. 7.39. Now how can that marriage bee in the Lord, which is against him? and how can that bee other then against the Lord; which is against the Lords commandment? And what commandment can be more expresse then *Honor thy father and thy mother Gal. 6.1.* And, *Children obey your parents? ver. 2.* And what can bee more contrary to the honour and obedience due to Parents, then to neglect them in the main business that concernes our lives? And what businessse can concern our life so much, as the choice of a meet partner, with whom we may comfortably weare out all the dayes of our pilgrimage on earth?

Doubtlesse then, we may in a generality

nerality safely conclude, that it is altogether unlawfull for a childe to sleight his Parents consent in the choice of his marriage; There may be some particular cases incident wherein perhaps this may without sinne or blame be forborn; as when the child either by general permission, or former elocation shall be out of the Parents disposing, or where the parent is defective in his intellectuals, or where the child lives *in remotis*, out of the compasse of intelligence; or where the Parent being averse from the true Religion denies his consent to match with any but those of his own straine; or shall upon other by-occasions wilfully stand upon so unreasonable terms, that neither friends nor authority can over-rule him: But where these or the like preponderating exceptions doe not intervene, the child cannot without sin balk the Parents consent

consent to his choice in marriage.

But though such marriages without, or against consent, bee not lawfully made; yet being once made, they are valid. * The civill law, out of the grounds of policy, goes herein too far; which sentenceth those marriages void; which are made without the consent of Parents or Guardians; but as Matrimony hath something in it of Nature, something of Civility, something of Divinity, as instituted by God, and by him to be regulated; so sure this last interest ought to over-sway the other two; The marriage therefore thus made, being, though faulty, yet true; is doubtlesse after consummation indissoluble. The parties repentance, and the parents sorrow may have leisure to afflict them, no power to relieve them.

* *Matrimonia esse irrita, &c.* Instit. de nuptiis, & ff. de jure nuptiarum. Ita & Evarist. in constit. edita Anno C.

CASE II.

Whether Marriage lawfully made may admit of any cauſe of divorce, ſave only for the violation of the marriage bed, by Fornication or Adulterie.

OUr Saviour hath ſo punctually decided the caſe in his Divine Sermon upon the mount, that I cannot but wonder at the boldneſſe of any man, who calls himſelf a Chriſtian, that dares raiſe a queſtion after ſo full and clear a determination from the mouth of truth it ſelf.

Whoſoever ſaith he ſhall put away his wife, ſaving for the cauſe of fornication, cauſeth her to commit adultery; and whoſoever ſhall marry her that is divorced, committeth adultery Mat. 5. 32. Yet I find this ſo evident an aſſertion checked by two ſorts of adverſaries; The one, certain wild Novelliſts,

vellists, who admit of very sleight causes of separation; the other, Romish Doctors, who plead for some other main and important additions to this liberty of divorce.

I have heard too much of, & once saw a licentious Pamphlet thrown abroad in these lawlesse times, in the defence and encouragement of Divorces (not to be sued out, that solemnity needed not, but) to be arbitrarily given by the disliking husband, to his displeasing and unquiet wife; upon this ground principally, that Marriage was instituted for the help and comfort of man; where therefore the match proves such, as that the wife doth but pull downe a side, and by her innate peevishnesse, and either sullen, or pettish and forward disposition brings rather discomfort to her husband, the end of Marriage being hereby frustrate, why should it not, saith he, be in the

Husbands power (after some unprevailing means of reclamation attempted) to procure his own peace, by casting off this clog, and to provide for his own peace and contentment in a fitter Match :

Woe is me, To what a passe is the world come that a Christian pretending to Reformation, should dare to tender so loose a project to the publique ? I must seriously profess when I first did cast my eye upon the front of the book, I supposed some great wit meant to try his skill in the maintenance of this so wild, and improbable a paradox ; but ere I could have run over som of those too well-penned pages, I found the Author was in earnest, and meant seriously to contribute this peece of good counsell in way of Reformation to the wise and seasonable care of superiors; I cannot but blush for our age, wherein so bold a motion hath been
amongst

amongst others, admitted to the light : what will all the Christian Churches through the world, to whose notice those lines shall come, think of our wofull degeneration in these deplored times, that so uncouth a designe should be set on foot amongst us ?

Or how can they construe it other then a direct contradiction to our Saviours sentence, in maintaining that practise which hee expressely professeth to oppose ? for, what was the Jewish guise here checked by our Saviour, but a voluntary repudiation of a lawfull wife upon the terms of dislike, other then fornication ? Their misinterpretation of the law alluded unto, argues no lesse ; The Law alluded unto is, that of *Deutronomy* : where God sayes, *When a man hath taken a wife, and hath been her husband, and it shall be, that she finde not grace in his eyes, because he hath found in*
* her

* her matter of nakednesse, he shall write her a bill of divorcement, and send her away, Deut. 24. 1. whereupon he infers with an *Ego dico*, I say unto you, *Whosoever shall put away his wife saving for fornication, causeth her to commit adultery*: the matter of nakednesse therefore, for which the Jews were then wont to divorce their wives, (and offended in so divorcing them) was any other displeasing qualitie, besides the breach of wedlock through bodily uncleannesse; for which only had they dismissed their wives, our Saviour had neither faulted their Glosses nor their Practise; so as herein Christ the giver of the Law, decides one of those great controversies, which were agitated between the emulous schools of *Sammai*, and *Hillel*: determining on *Sammai's* side, that for no other nakedness but that of adultery it was

עדות יבר

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lawfull to divorce a wife: and flatly condemning by the like answer that [*πῶτεν ἀτίαν*] (*Mat. 19. 3.*) every cause of repudiation then ordinarily received; as it was by the Pharisee purposely propounded unto him.

Answerable whereunto is that of the Prophet *Malachi*; who (in our just reading) hath so fully decided the cause, as if it had been expressly referred to his umpirage: *The Lord* (saith he) *hath been witnesse between thee and the wife of thy youth, against whom thou hast dealt treacherously; Yet is she thy companion, and the wife of thy covenant, Mal. 2. 14, 15, 16.* (Loe, the wife of thy covenant, therefore too sure settled to bee turn'd off upon every sleight occasion; what? was thy covenant to take her for thy wife till thou shouldst dislike her? what were this but to mock God and the world? thy covenant implies no less then firmitude and perpetuity.)

There

Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth : For the Lord, the God of Israel, saith, that he hateth putting away ; For one covereth violence with his garment, saith the Lord of hosts : Therefore take heed to your spirit that you deal not treacherously. What is this treachery which the Prophet cries out against thus vehemently, thrice over with a breath, but pretended and unjust suggestions against a lawfull wife, for her undue divorce ? and what is that violence, but the injurious execution of those suggestions ? upon which insufficient grounds the Lord professes to hate putting away.

Yea how apparently contrary is this practise to the very originall institution of marriage it self ? He that made it in Paradise ordained thus : *Therefore shall a man leave his father and his mother, and shall cleave unto his wife :*

wife; and they two shall be one flesh, Gen.
2. 24. Loc, before ever there was father, or mother, or son in the world, God hath appointed that the bonds betwixt husband and wife shall be more strait and indissoluble then betwixt the parent and child; and can any man be so unreasonable as to defend it lawfull, upon some unkinde usages, or thwartness of disposition, for a parent to abandon and forsake his child; or the son to cast off his parent? much lesse therefore may it be thus betwixt an husband & wife: *They two are one flesh.* Behold here an union of Gods making: A mans body is not more his own, then his wifes body is his: And will a man be content to part easily with a peece of himselfe? Or can we thinke that God will indure an union made by himself to be sleightly dissolved? Or how is this bodily matrimony a lively image of the spirituall marriage

age betwixt Christ and his Church (who hath said, *I will betroth thee unto me for ever; Yea I will betroth thee unto me in righteousness, and in judgement, and in loving kindnesse, and in mercies, Hos. 2. 19.*) if upon small occasions it may be subject to utter dissolution? Yea, what speak I of Divinity? Even modest Heathens would hiffe this Libertinisme off the Stage: Amongst the rest, what a fool was *Socrates*? The Oracle, belike, called him the wisest man of his time; but what a fool was he to indure the unquiet clack of his *Xantippe* with such cool patience, if he might have quit himself of the trouble with a sodain act of her dismissal? Or what use was there of those Delegates of *Athens* and the *Harmosyni* of *Lacedaemon* for the peeing up of these domestique breaches betwixt husband and wife, if the imperious husband had power to right himself

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by turning the scold out of doors?

Lastly, What silly counsaile was that which the Jewish Rabbi gave to his client, matcht with a shrew; *The bone that is false to thy lot, that doe thou gnaw upon*; if it were altogether free for him to leave that bone, and take another?

But I have dwelt too long on so grosse a subject: There may yet seem some better colour for the plea of the Romish doctors which admit infidelity and heresie into the rank of those causes which may warrant a divorce: But herein the ambiguity of the word (if heed be not taken) may deceive you; The * Hebrew text, to which our Saviour alludes, uses a word which signifies excision, or cutting off; The Greek, a departing away, or putting off; The Latine, *Divortium*, in his true sense is not so hainous as either of the other, signi-

* *Dent.* 24.1. כרות בלבן ופסול

fyng

fying rather a turning aside, but in
 our ordinary acception amounts to
 no less then both. But what unjust
 difference they make betwixt finall
 separation and dissolution, we shall
 finde in our next discourse : On-
 wards, that such separation may not
 be made of man and wife (lawfully
 joyned together) for heresie or mis-
 belief ; we need no other conviction
 then that peremptory and clear de-
 termination of our Saviour which
 we have formerly insisted on : For
 though his words on the mount were
 in a way of doctrinall assertion, yet
 afterwards the same words were u-
 sed by him, in way of a satisfactory
 answer to the Pharises question con-
 cerning causes of divorce; profess-
 edly resolving that there could be no
 allowable ground of such separation
 except fornication. What words can
 be more plain? It is but a shift to say
 (as the Cardinall doth) that our Sa-
 viour

viour here meant only to expresse the proper cause of the separation of married persons; which is the breach of marriage faith : as having no occasion to speak of those generall grounds which reach to the just sundring of all humane societies ; such as Heresie and Infidelitie; which are enough to unglew all naturall and civill relations betwixt father and son, master and servant , husband and wife: For it is clear that neither question nor answer were bounded with any particularities ; The Pharisee asks, *Whether for every cause?* Our Saviour answers ; *For no cause but fornication* ; And it is spoken beside the book, that child or servant should or may forsake parent or master in case of heresie, or infidelity: S. Paul teacheth other Doctrine : *Let as many servants as are under the yoke* (of bondage) *count their* (infidell) *masters worthy of all honor ;* 1 Tim. 6. 5. not worthy

thy therefore of desertion and disclamation : And if the servants may not shake off the bonds of duty ; much lesse may the son brake or file off the bonds of nature ; and as for the matrimoniall knot, how too sure it is to be loosed by infidelity it self , let the Apostle speak ; *If any brother hath a wife that beleeveth not, and she be pleased to dwell with him, let him not put her away, 1 Cor. 7. 12. And the woman which hath an husband that beleeveth not ; and if he be pleased to dwell with her, let her not leave him, ver. 13.* And if even Infidelity have not power to dis-oblige the wife or husband, much less Heresie : In this pretended case therefore to separate from board and bed, is no better then a presumptuous insolence ; It is the peremptory charge of Christ, *What God hath joyned together, let not man put asunder, Mat. 19. 6.* In all lawfull marriages, it is God that joyns the hands

hands and hearts of the Married. How dare man then undoe the work of God upon deviles of his own? Had the Lord ever said, If thy wife be a wilfull mis-beleever, rid thy hands of her; this separation were just; but now that his charge is clean contrary, what an impious sauciness is it to dis-joyn those whom God hath united?

As therefore, it is not in the power of any third person, upon any whatsoever pretence, violently to break the sacred bond of Marriage; so neither may the husband or wife enthrall each other by a wilfull desertion; whether upon pretext of religion, or any secular occasion; In which cause what is to be don must come under a further disquisition; Certainly it was never the intention of the holy and wise God, by vertue of that which was ordained for mans comfort and remedy of sin, to binde
him

him to a remediless misery; which must necessarily fall out, it upon the departure of an unbeleeving or hereticall yoke-fellow, the relict party must be tyed up to a perpetuall necessity of either containing, (if he can) or, if he can not, of burning; The wise Doctor of the Gentiles well fore-saw the dangerous inconvenience that must needs hereupon ensue, and hath given order for prevention, accordingly.

But if the unbeleeving depart, let him depart; *A brother or a sister is not under bondage in such cases; but God hath called us to peace,* 1 Cor. 7. 15. Not, that it is free for a man or woman so forsaken, to carve him, or her self of redresse (what an infinite confusion would follow upon such licentiousness?) but that after long and patient expectation, and all probable means used for the reduction of the party deserting; recourse be had (as to the
last

last refuge) to publique ecclesiastical authority (which is the fittest to manage these matrimoniall affairs) in whose power it may be, either by grave admonitions, and just censures to bring back the offender to his duty; or upon his continuing contempt, to set a day for the publication of the just freedom of the forsaken: wherein they shall doe no other then execute that Apostolike sentence for exemption from an unjust bondage, and providing for a just peace.

CASE III.

Whether after a lawfull Divorce for Adultery, the innocent party may marry again.

Although Matrimony be not, according to the Romish tenet, one of those Sacraments which imprint an indeleble Character in the

re-

receiver ; yet it hath, as they hold, such a secret influence upon the soul, as that it leaves a perpetuall bond behind it, never to be dissolved till death ; So as those offenders, which by just censure are separated from the board and the bed, cannot yet be freed from the bond of marriage : upon this ground it is that they bar the innocent party from the benefit of a second marriage, as supposing the obligation of the former still in force. In the ordinary Bills of the Jewish divorce, the repudiated wife had full scope given her of a second choice ; as the words ran : * *She was to be free, and to have power over her own soul ; to goe away ; to be married to any man whom she would* : They were not more liberall, then our Romish divorcers are niggardly : The Jewish divorce being upon unwarrantable cause, made their liberality

* Maimon. Treat. of Divorce,

to much more sinfull, as their divorce was more unjust: for the divorced woman was still in right the lawfull wife of that unrighteous husband that dismissed her; the Romish doctrine makes their strait-handedness so much more injurious, as the cause of separation is more just.

Even this question also is expressly determined by our Saviour in his answer to the Pharisee: *Whoſoever ſhall put away his wife, except it be for fornication, and marrieth another, committeth adultery: Mat. 19.* Lo then, he that for ſo juſt a cauſe as fornication putteth away his wife and marrieth another, committeth not adultery: the exception manifeſtly implies ſo much, both in reaſon and common uſe: neither indeed, are the words capable of any other probable ſenſe: That which *Bellarmino* would faſten upon it, referring the exception to the former clauſe, of diſmiſſion on-

ly, so as it might be lawfull to divorce only for fornication, but not to marry after divorce, cannot stand without a supply of words of his own, which God never allow'd him to interfert; and besides utterly destroys the sense; casting such a doctrine upon our Saviour, as he would hate to own; for except that restraint be refered to the marrying again, the sense would run thus, *whosoever puts away his wife commits adultery*; which stands not with truth or reason: fith it is not the dismissal that is adulterous, but the marriage of another: It is therefore the plain drift of our Saviour, to teach the Pharisee, that the marriage of a second wife (after dismissal of a former, upon any other cause, except for fornication) is no less then adultery: thereby enforcing, that upon a just dismissal for fornication, a second marriage cannot be branded with adultery.

Neither

Neither will it ſerve his turne,
which he would borrow from St.
Auguſtine, that upon this negative of
our Saviours, we may not look to
build an affirmative of our own; for
though it be granted, that he, who
putting away his wife not for forni-
cation, & marrieth another, ſinneth;
yet it followes not that he who ha-
ving diſmiſſed his wife for fornicati-
on, marrieth another, ſinneth not at
all: A ſin it may be, though not an
adultery: For ſurely if it be a ſinne;
it muſt be againſt a commandement;
and if againſt any commandement,
it muſt be againſt the ſeventh; and
what is the ſeventh cōmandement,
but *Thou ſhalt not commit Adultery*?
Beſides, the Pharīſees queſtion [*Is it
lawfull for a man to put away his wife
for every cauſe?*] was not without a
plaine implication of liberty to mar-
ry another; which our Saviour well
knowing, gives a full anſwer as well

to what he meant, as what hee said; which had not been perfectly satisfactory, if he had only determined that one part concerning dismission, and not the other concerning marriage; which clause if two other Evangelists expresse not, yet it must be fetched necessarily from the third; since it is a sure & irrefragable rule; *That all four Evangelists make up one perfect Gospel*. It is therefore a very tottering and unsure ground which our Rhemists build upon; as if the Apostle meant to crosse his Lord and master, when hee saith, *The woman which hath an husband is bound by the Law to her husband, so long as hee liveth, Rom. 7.2.* therefore only death can dissolve the bond of marriage; not divorce, not adultery, not divorce for adultery: For how plainly doe the words carry their answer in themselves: * *The woman* (saith the

* So also 1 Cor. 7. 39.

(Apostle

Apostle) *that hath an husband* : but the woman legally divorced for fornication, hath no husband : *S. Paul* speakes of a true wife, not a divorced harlot : hee had no occasion here to look aside at matter of divorce, but takes marriage as in its intire right ; rather desiring to urge (for clearing the case of our obligation to the law) that the husband being once dead, the wife is free to marry again, then to intimate the case of her incapacity to marry till he be dead.

As for that bond therefore, which is so much stood upon, if it be taken without all relations to the duties of bed and board; it is meerly Chimericall; nothing but fantastic. There are, or should bee Bonds of affection; Bonds of mutual respects; and reciprocall duties betwixt man and wife, and these must hold firme notwithstanding any locall separation; neither time, nor place may so much

as ſlacken, much leſſe looſe them : but where a juſt divorce intervenes, theſe bonds are chopt in peeces, and no more are, then if they had never beene : And if all relations ceaſe in death (as they doe, in whatſoever kind) ſurely divorce, being (as it is) no other then a legall death, doth utterly cut off (as the hebrew term imports) all former obligations and reſpects betwixt the partys ſo finally ſeparated.

The adulterous wife therefore duly divorced being thus dead in law as to her husband, the husband ſtands now as free as if he had never married, ſo as I know not why the Apoſtle ſhould not as well ſpeake to him as to any other; when he ſaith : *Nevertheleſſe to avoid fornication, let every man have his own wife, 1 Cor. 7. 2.* Neither is it otherwiſe in the caſe of a chaste wife after her ſeparation from an adulterous husband, *Mar. 10. 12.*

In

In these rights God makes no difference of sexes, both may lawfully claim the same immunities : which certainly should they be denied to either, must needs draw on very great inconveniences : For in how hard a condition should the innocent party be hereupon left ? Either the husband or wife must bee forced to live with an adultrous consort, or be tyed to a perpetuall necessity of either doing that (which perhaps they cannot do) containing; or of suffering that which they ought not to endure, burning.

What remedy now can bee expected of so great a mischief ? Our Romish doctors propose two; Reconciliation, or Continence : Both good, where they may be had ; Reconciliation, in case of a seasonable & submisse repentance; That which is the Apostles charge in case of desertion, holds here also, [*καταναγίντω*] *let her*

be reconciled; the more nainous the wrong is, the more commendable is the remission.

Continence, after such separation, in case of ability so granted: for surely this holy disposition is a gift; and therefore is not had, where it is not bestowed; those that place it in our power, derogate from the thanks of the giver: yea, he that gives it tels us *all cannot receive it*, Mar. 19. 11. hee must not only give it, but give us power to take it.

But where the offending party is obstinately vicious; & the innocent (after all endeavors) unable to contain, without a supply of marriage, the case is remediless, and we know Gods mercy such, as that he leaves no man for matter of resolution utterly perplexed.

Shortly then, I doubt not but I may notwithstanding great authorities to the contrary) safely resolve,
that

that in the case of divorce it is lawful for the innocent person to marry ; But for that I finde the * Church of *England* hitherto somewhat tender in the point; and this practice, where it rarely falls, generally held ; though not sinfull, yet of ill report , and abnoxious to various censures; I should therefore earnestly advise and exhort those whom it may concerne, carefully and effectually to apply themselves to the fore-mentioned remedies; Reconciliation, if it be possible, to prevent a divorce ; Holy endeavors of a continued continence (if it may be obtain'd) to prevent a second marriage after divorce : But if these prevail not, I dare not lay a load upon any mans conscience which God hath not burdened ; I dare not ensnare those whom God will have free.

* Decreeing to take bonds of the persons divorced to remain single. Can. & Constit. c. 107.

CASE IV.

Whether the authoritie of a Father may reach so farre as to command or compell the Child to dispose of himself in Marriage where hee shall appoint.

THe extent of a paternal power, as we have partly shewed already, hath been wont to be very large; reaching in som cases by the Civill law to the life of the Child; and by the Jewish law, to his liberty: so as it might seem much more over-ruling in case of Marriage; which also seemes to be intimated by the Apostle in that he supposes and gives a power to the parent either *to give or keep his virgin*: And how apt parents are to make use of this awfull authority in matching their children for their own, worldly advantage, contrary to their affections and disposition,

position, we have too lamentable experience every day; neither is it easy to set forth the mischievous effects that have followed upon those compelled marriages : for hence ensue perpetuall discontentments to the parties so forcedly conjoynd; an utter frustration of the end of mariage, which should be mutuall comfort: and not seldome, dangerous machinations against the life of the disaffected consort; as it were too easie to instance every where; but especially if the affections of the yong couple have been before (as it oft falls out) placed elsewhere; what secret heart burnings; what loathing of conjugal society; what adulterous plottings doe straight follow; what unkind defiance passe between them: how do they weare out their days in a melancholick pining, & wish each other, & themselves dead too soon? Yea herin an imperious or covetous parent

parent may be most injurious to him selfe, in robbing himselfe of that comfort which he might receive from a dutifull child in her person, in her posterity; for the avoiding of which mischiefs it were meet & happy, that both parent and child could both know their limits, which God, and nature hath set, and keep them.

Let the child then know that he is his parents; that as he was once a part of them, in respect of his natural being, so he should be still in his affections, and obsequiousness, and therefore that hee ought to labour by all means to bring his heart unto a conformity to his parents will & desire, according to that universall rule of the Apostle, *Children obey your parents in all things; for this is well pleasing unto the Lord : Colos. 3. 20.* The word is comprehensive, *In all things.* Things unlawfull passe for impossible; we only can doe what we ought.

In all those things then which are honest, lawfull, just, parents must be obeyed : And the motions for marriage being such , impose upon the child so far a duty of obedience as that he is bound to work his affections what he may to a compliance with his parents will; the wilful neglect whereof is no better then a kind of domestique rebellion.

Let the parent again consider that the child however derived from his loins, is now an entire person in himself ; that though the body came from him, yet the soule was from above ; that the soul of his child is endowed with powers and faculties of its own; that as he is not animated by his parents spirits, so he is not inwardly swayed by his parents will or affections; that when his reason comes to be improved, there may bee differences of judgement betwixt his parent and him, and from thence may
arise

arise a diversity or contrariety of affections and desires; and these affections and passions may grow to such strength as that he himselfe shall not be able to master them; and if the parent feele himself subject to such infirmities, well may he be induced to pity those whom a vigorous heat of youth hath rendred more headstrong and unruly; wherehall, let him consider that though the child should be advised by the parent, yet it is fit that he should like for himselfe; that the will is to be led, not driven; that no marriage can be happy, but that which is grounded in love; that love is so altogether voluntary, that it can not consist with constraint.

Lastly, let him know that the power of the father though great, yet is not unlimited; It is the charge which the father of mercies hath laid upon all earthly fathers in their carriage towards their children; *Fathers, provoke*

voke not your children to wrath (Or (as the * Vulgar reads it) *to indignation*) lest they be discouraged: and surely, if there be any thing wherein the passion of the child may be like to be inordinately stirred, it is in the crossing of an once well-settled affection; and diverting the streame of love into another channell; For the avoiding whereof the imperiall lawes have been so indulgent to the child; as that (according to their best glosses) they permit not the father to disinherite the daughter for choosing an husband not unworthy of her self, though against her fathers mind; yea some of them have gone a step further: but I forbear: How far it may be lawfull and fit for the parent to punish the disrespect of a child; in so important a case, is not for me to determine; doubtlesse where the provision is

* Μὴ παροργίζετε, Eph. 6. 4. Μὴ ἐπειθίζετε, Colos. 3. 2.

arbitrary

arbitrary, the parent will be apt so to manage it, as to make the child sensible of a disobedience; so as both parts herein suffer, and are put into a way of late repentance.

Briefly therefore, on the one side the Son or Daughter doe justly offend, if without cause, or wilfully they refuse the parents choyce; and are in duty bound to worke their hearts to an obedient subjection to those, unto whom they owe themselves; and for this cause must be wary in suffering their affections to over-runne their owne reason, and their parents guidance; eyther suppressing the first motions of unfuly passions, or if they grow impetuous, venting them betimes into the tender cares of their indulgent Parents, or discreet and faithfull friends; that so they may seasonably prevent their own misery, and their parents grief: On the other side the parent shal offend

send, if holding too hard an hand over the fruit of his own body, he shall resolve violently to force the child's affections to his own bent; & where he finds them settled wil rather break then bow them; not caring so much to perswade as to compell love: These harshnesses have too much of Tyranny in them to be incident to a Christ an parent; who must transact all these matrimonial affaires in a smooth & plausible way of consent & indulgence: A noble and ancient pattern whereof we find in the contract betwixt *Isaac* & his *Rebecca*, *Gen.* 24. 49, 50, 51, 52, &c. the match was treated on betwixt *Abrahams* proxie, and the maids father *Bethuel*, and her brother *Laban*: The circumstances drew their full consent; all is agreed upon betwixt parents; but when all this is don, nothing is don till *Rebecca* have given her assent; they said, *Wee will call the damsell, and enquire at her mouth*

mouth, ver. 57. And they called Rebecca, and said unto her, Wilt thou goe with this man? And she said, I will goe. ver. 58. Now the contract is made up; till then, all the engagements of *Bethuel* and *Laban* were but complements; Till then, all the rich Jewels of Gold and Silver given to the intended Bride; and all the precious things given to her mother, & brother, were but at the mercy of the receivers; Neither ought it to be other in all Christian espousals; the free and cheerfull consent of parents and parties makes the match both full and happy; Let not the Childe dare to crosse his parents; let not the Parent think to force the child; and when an undue bargain is, through the heat of passion, made up past reclamation, let love and pity so far intercede for the offenders, that they may smart for their rashness & neglect, without their utter undoing.

CASE V.

Whether the marriage of Consens Germans, that is, of Brothers or Sisters Children, be lawfull.

THe displeasure of the Canon law against such marriages is so high flowne, that no lesse can take it off then an utter diremption of them even though they be not ratified only, but consummate by carnall knowledg : and the grave authority of some ancient and holy Fathers, and eminent Doctors of the Church (besides five severall Councils) have passed an hard sentence upon them. The maine ground of the supposed unlawfulness, is, that clause of Gods Law which was more then judiciall : *No man shall approach unto any neere of kin to his flesh to uncover their nakednesse ; I am the Lord, Levit. 18. 6.* Which though *Cornelius*

nelius à Lapide * (following his *Radulphus*) would ſeeme to reſtraine to the enſuing particularities onely ; yet they may not think that God will ſuffer ſo univerſal a charge to be ſo ſtraitly pent ; eſpecially, when we know that there are divers other no leſſe unlawful copulations omitted in this black Roll of uncleanneſſes, then thoſe which are expreſſly mentioned ; the reſt being intended to come in by way of analogy only : for it is eaſy for any reader to obſerve, that all the ſeveralities of the degrees prohibited run ſtill upon the male ; under which, if the like exorbitances of the other ſexe were not meant to be comprehended, females ſhould be lawleſſe, and the lawe imperfect ; To marry then with a Couſen-german is apprehended by theſe Canoniſts to be an approach to *one neare kinne to our fleſh* ; and there.

* *Cor à Lap in locum.*

fore intimated in that inhibition :
Doctor * *Willet* (a man much deserving of Gods Church) conceives these marriages to bee analogically forbidden, in this catalogue of *Moses* For, saith he, if the degrees of affinity be limited to the third or fourth degree; as it is not lawfull for a man to marry his wifes daughters daughter (*Levit. 18. 17.*) why should not the line of consanguinity hold to the fourth degree likewise; and so neither the sonne to marry his fathers brothers daughter; or the daughter the sonne? But that worthy Divine did not heedfully observe the great difference betwixt these instanced degrees; for the one of these is an equal line, the other in an unequal; the one is a collaterall consanguinity, the other is in a directly descending affinity; so as the husband should bee grandfather in law to the wife, which

* *Will. Syno. Controver. 15. de Mart. q. 3.*

in

in all reason were very unlawful, and absurd; since in all those descending degrees there is a kinde of reverential inequality betwixt the lower and superiour, which abhorres from all proportion of a match: whereas the collateral equidistance of Cousengerman from the stock whence both descend, hath in it no such appearance of inequality, Certainly then, no analogy can draw these marriages within the prohibition; whether the nearness of approach to our flesh be a just bar to them, must be further considered.

Gregory *, (whom some would faine interests in our English Apostleship) writing to his *Augustine*, in way of answer to his Interrogations puts these mariages in the same rank with the marriages of brothers and sisters, which hee brands with this note, that they seldom ever prove

* *Greg. resp. ad Interrog. Augustini. q. 6.*

fruitfull ; As for those of brothers and sisters (which were usual, as *Diodorus Siculus* tells us) amongst the *Egyptians*, and are this day in use in barbarous nations) nature it selfe abominates the mention of them : In the first plantation of the world there was a necessity of them ; as without which there could have been no humane generation; but afterwards, as the Earth grew more peopled, so these matches grew still more odious : like as it was also in the first plantation of the Church ; the holy Seed being confined to a narrow compasse, were forced, unlesse they would joyne with Infidels, to match sometimes over-neer to themselves ; as even *Abraham* himself, the father of the faithfull, married his brothers daughter : but when the bounds of men and beleevers came to be enlarged, the greater elbow room opened a wider liberty of choice ; and now
Gods

Gods select people found it meet to observe a due distance in the elections of their wives; so regarding the entireness of their Tribes, as that they fell not within the lines of prohibition; wherein no mention being made of brothers and sisters children in all ages and nations, some have thought fit to make use of their freedom in this kind.

What neede I to urge the case of *Zelophehads* five daughters, *Num.* 36. 11. who by Gods own approbation, were married to their fathers brothers sonnes; To mince the matter, and to make these sonnes, nephews, according as the Hebrew phrase (as Doctor *Willet* endeavors to doe) is without either need or warrant; since these scruples were not since that time stood upon by the Jewish people: yea this practise was no lesse current among the civiller heathens of old; I could tell you of
Cluentia

Cluentia * (by *Ciceroes* relation) married to her cousen *Marc. Aurius*; of *Marcus Antonius* the wise and vertuous Philosopher, marrying his cousen *Faustina*, and a world of others: were not this labor saved me by the learned lawyer *Hotoman*; who tells us how universall this liberty was of old, as being enacted by the lawes of the Roman Empire; and descending to the lawes of † *Fustitian*; confidently affirms that for five hundred yeeres, all Christian people (*magno consensu*) allowed and followed these Imperiall constitutions concerning Matrimony: Although I might here put him in minde of *Theodosius* enacting the contrary in his time; as it is like, by S. * *Ambroses* instigation; who then sharply inveighed against these matches in a

* *Cic. orat. pro Cluentio* † *Hotoman de grad. cognat. Laurent. Kirchovius Profes. Rostoch. in consil. Matrimon.* * *Ambros. ep. ad Paternum* 66.

vehement epistle to *Paternus*, being then in hand with a marriage betwixt his son & his sisters daughter: But excepting that good Emperour, the coast was cleare perhaps, for the Cæsarean constitutions; not so for the judgement of Divines; amongst whom, it were enough that *S. Ambrose* and *S. Augustine* (the flower of the Latine fathers) if no other, doe bitterly oppose it: This judgement being found not probable only, but exceeding profitable to the Roman See, it is no wonder if it obteyned both credit and vigour from thence. Decrees & Decretals make this inhibition good, not without damning the contrary practise; and now the Civill and Canon lawes clashing with one another, how can it be but the prevalence must be according to the power of the abettor? What liberty the Court of Rome hath taken to it self in the restraint of marriages,

ges, and upon what ground; all Christendome both sees and feels: One while their prohibition reaches to the seventh degree in natural kindred, then to the fourth: One while the impediment of spirituall cognation, is stretched so far, without any colour of divine authority, as that (what by * Baptisme, what by Confirmation) twenty severall persons are excluded from the capacitie of intermarriage: Anotherwhile the market is taln to fourteene: And wherefore this? but for the sweet & scarce valuable gaine of Dispensations, upon these occasions flowing in to the Lateran treasure? For which considerations wee have learned not to attribute too much to the judgement or practise of the Roman courtiers in this point. Upon the summing

* *Hodie cessat fraternitas & aliqua ex parte paternitas per concilium Trident. Sess. 24. Navar. c. 22. n. 27.*

up then of this discourse, will you bee pleased to see the vast latitude of different opinions concerning these marriages: The Canon lawe decryes them with such rigour, as to ordain them (though after a conjugall conversation) separated; some moderate Divines (as Doctor *Willet*) finding this sentence too hard, go not so far, but hold this neernels of blood a sufficient bar to hinder a marriage contracted, though not consummate: som others (as Mr. *Perkins* in my conference with him) hold it, though not unlawfull, yet inconvenient: som others (as learned and accute M. *Woolton*, and M. *Atter-sall*) who have written a very large discourse in way of vindication of them) hold them both lawfull, and not inexpedient; * *Hotoman* yet higher, *pium & Christianum esse, quod du-*

* *Hotoman* de vita Matrimon. p. 6. citat Kirchovio, ut supra.

*arum sororum liberi matrimonio copul-
lentur* ; that such a marriage is pious
and Christian : In all this variety if
you desire my opinion , I shall nei-
ther censure such marriages where
they are made , nor yet incourage
them to be made where they are not:
to those that are free I should be apt
to suggest counsaile of forbearance,
the world is wide , the choice abun-
dant ; let it be never so lawfull , yet
how unwise and unsafe were it to put
the conscience upon the nicety of a
dangerous scruple, when it may keep
aloof off with a cleere freedom and
resolute contentment ? That these
marriages are disallowed by so great
authority, should bee reason enough
to divert the free thoughts to a safer
election; and againe, that these mar-
riages are allowed both by Civill
lawes, and by the judgement of emi-
nent Divines ; and not any where
forbidden eyther (*Fure Casareo* or

Apostolico) by Gods law or *Cæsars*; should be reason enough to bear up the hearts of those who are so matched, from a scrupulous dejection. Let the persons therefore so married enjoy themselves with mutual complacency and comfort, not disquieting themselves with needlesse anxieties; Let those single persons who have the world before them look further off; and fasten their affections at a more unquestionable distance: As it was wont to be worthy *M. Perkins* his expression to this purpose; Let those who must walke close to the brim of a steep precipice, look well to their feete and tread sure, and so they may come off perhaps as safely as those that are further off; but if a man be to choose his way, let him so cast it, as that he may not approach neere to the brink of danger.

CASE VI.

Whether it is necessary or requisite there should be a witnessed contract, or espousals of the parties to bee Married, before the solemnization of the Marriage.

IT is necessary wee should distinguish betwixt those things which are essentiall to the very being of marriage, & those which are requisite to the orderly and well-being of it: It may not be denyed that the marriage is true & valid, which with full consent of parties is made without the intervention of a previous contract in a due & lawful form prescribed by the Church: but it is no less true that such a marriage is very unmeet, & liable to just exceptions: That * God, who is the author & institutor of marriage made a diffe-

* Exod. 22. 16 Levit. 19. 20. Deut. 20. 7. Deut. 22. 25 23. 28. Jer. 2. 2

rence in his law, betwixt a betrothing & a matrimony; he that ordained the one, ordained the other also; and ordained the one in order to the other: And this was constantly observed in the practise of Gods ancient people accordingly, so we finde the blessed * Virgin espoused to *Joseph* before his taking her to wife; neither did the Christian Church think fit to vary from so holy a pattern; where-to S. † *Paul* alludes, when writing to, and of the Church of *Corinth* which he had happily planted, and forwarded in grace) he saith, *I have espoused you to one husband, that I may present you as a chaste Virgin to Christ.* Loe hee hath betrothed them to Christ in that he had entred them into a Covenant of grace, and prepared their soules for a full consummation of their blessed union with

* Compare *Mat.* 1. 18. with *Deut.* 22. 13 † *Magdeburg.* Cent. 2. de Conjugio 2 *Cor.* 11. 2

Christ in glory, intimating (as Matrimony is a lively resemblance of our spirituall conjunction with the Lord of glory) that our bodily espousalls here below, are they which must make way for a complete marriage ensuing: it were not difficult, if it were needfull, to deduce this holy practise downe from the primitive times to the present: Before the *Nicene* Councell we find the Synod of *Ancyra* * enjoyning a severe penance to the man that should defile his body by an incestuous copulation, after espousalls contracted: And the Councell of *Eliveris* or *Granado*, about the time of the *Nicene* convention, takes such notice of these betrothings, as that it decreed †, that if any Parents should break the faith mutuallly engaged in these espousals, they should bee held off during the space of three yeeres from the Com-

* Concil. *Anciran*, can. 24. † Concil. *Eliv.* c. 45.

munion. What ſhould I trouble you with the Decree of * *Syricius* concerning theſe contracts; or with the pregnant teſtimonies of *S. Chryſoſtom* and *Ambroſe* to this purpoſe; which were but to waſt time & paper upon ſo cleere a truth? As there was no Chriſtian Church which did not carefully obſerve this ſacred Rite: ſo above all other the Roman hath been at leaſt curious enough in calling for a ſtrict and ſevere account of their eſpouſals: What voluminous diſcourſes? What a world of nice queſtions have fallen from the pens of their Canoniſts and Caſuiſts concerning this ſubject? Certainly this is a point of ſo much uſe and agitation amongſt them, that were it not for the quarrels ariſing herefrom, it is to be feared their conſiſtories would want work, and their Advocates imployment: But to ſpeake ingenuouſly,

* *Luitbrand* in *Syrie*.

those of the Roman Clientele are not more careful & punctual in scanning, and observing the rules and practise of their espousals, then ours here are incurious of both: How many have we heard to say, they will make no promise of themselves till they come to the Church-dore? and of those that doe contract themselves, how weakly & insufficiently is it performed on many hands? so as their act, if questioned, is no way obliging; nor such as upon the least discontent, will indure a contestation.

Now whereas there is a double contract or espousall, the one of the future; the other of the present: that of the present, if it bee expressed in full termes, differs nothing from marriage it self, save only in the publick solemnization; which doubtlesse is a ceremony so requisite, as that without it an horrible confusion must needs

needes follow both in Church and State.

That of the future, is a mutuall engagement of both parties, that they will marry each other; which is moſt properly an eſpouſall-Contract; giving both aſſurance to each other of a mutuall conſent to a Matrimony that ſhall bee; and yet withall ſome meet reſpiration of a more full triall and inquiry into each others condition: For which purpoſe the wiſdom of the Church hath ordained that there ſhould be a ſolemne publication of that more private Contract three ſeverall Sabbathſ, to the whole Congregation; not with ut the earneſt charge of a diſcovery of whatſoever impediment might juſtly hinder the intended matrimony.

The frequent, but unfit, uſe of theſe eſpouſall-Contracts in the Roman Church, betwixt their children

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in minority (allowing * seven yeers in eyther parry for a meete age to this purpose) must needs breed both much question and inconvenience: but in those which are of a mature age, and therefore able to judge of what may bee most expedient for themselves, this institution cannot be but singularly usefull & beneficiall: For neither is it meet that so great a work, and so highly importing us as matrimony, should bee rashly and suddainly undertaken; neither doth it a little conduce to our safety, that since marriage once passed is irreversibile, we may have som breathing-time betwixt our promise and accomplishment to inform our selves thoroughly before it bee too late, what we must trust to for ever. For we may take notice, that though mar

* *Atas legitime contrahendi matrimonium, est in masculis 14 annos, in feminis 12 Sponsalibus autem contrahendis septem in utriusque. Navar. c. 22. n. 28*

riage is indissoluble, yet these espousals, or contracts of a future marriage are not so; many things may intervene betwixt this engagement by promise, and that a full and compleat solemnization, which may break off the match.

The Casuists determine of seventeen severall cases, at the least, which may sort to this effect; som whereof have a proper relation to the Romish religion; others are common to what ever contracts of this kind; I shall not grudge you the mention of them all. An espousall-Contract therefore may (according to their judgement) be broken off.

By the willing remission of both parts, although it had been seconded by an oath: By the entrance of the one party into some order of religion: By a contract with some other in words of the present: By the travaile of one of the parties into remote

more coun ries, and not returning up on a lawfull summons at a time prefixed by the Judge : By an affinity supervening upon the sinfull copulation of one of the parties with the near kinſwoman of the other : By the absolution of the Judg upon suit of one of the parties repenting and pleading minority : By lapse of the time set for the accomplishment of the marriage by the disease of one of the parties being fallen into Palsie, leprosie, the Neopolitan sickness, or any other contagious distemper, or notable deformity . By the fornication of one of the parties committed since the contract : By a vow of chastity preceding the contract : By some capitall enmity intervening betwixt the families and persons of the contracted by the omission of performing the promised conditions ; as when the dowry agreed upon, is retracted or held off : By the fame of

a Canonically impediment, By susception of Orders after contract; By the supervention of a legall kindred, unexpected; By the harshnesse and asperity of disposition in either party. And (which may comprise many other particularities; by the falling out and discovery of any such accident, or event, as if it had beene sooner knowne would have prevented the making of such a contract; All these say they, may bar a marriage after espousalls : but yet so, as that the parties may not be their own arbiters, to break off their contracts at pleasure, but must have recourse to the Judge Ecclesiasticall; and submit themselves to the over-ruling sentence of the Church.

If you balk those which are proper to the Romish superstition, yet you shall finde many just and allowable causes which may (after a contract of espousall) interrupt a purposed

fed matrimony : so as, if there were neither rule, nor example of any such preceding engagement, yet surely, it were very fit for our own security, and our confident and comfortable entrance into that estate which we shall never put off, to observe carefully this previous betrothing of our selves ere wee knit the knot that can never be loosed.

CASE VII.

Whether there ought to bee a prohibition and forbearance of marriages, and marriage duties for some appointed times.

IT is one thing what is lawful and another thing what is fit and expedient; as S. Paul hath taught us to distinguish: marriage being of Gods own institution; and that in the perfection of Paradise, there can be no
02 time

time wherein it may be unlawful to celebrate it; yet there may be times wherein it is unfit: There is the like reason of times and places; both of them are circumstances alike; The debt of the marriage-bed not onely may, but muſt bee paid by them whom God hath called to that eſtate yet there are places wherein it were barbarous and piacular to defray it: even, beſides thoſe places which are deſtin'd to an holy uſe, the Jewes of old held this act done in the field or under a tree, worthy of ſcourging: Doubtleſſe* there are times ſo wholly conſecrated to devotion, as that therein it would be utterly unſeaſonable to let our thoughts looſe to the moſt lawful pleaſures: Hence is that charge of the Apoſtle, *Defraud not one the other, except it be with conſent for the time, that ye may give your ſelves to faſting and prayer: 1 Cor. 7. 5.*

Maïmon. Shicard. de Reg.

So

So then as *Solomon* himselfe can say,
There is a time to embrace, and a time to
refrain from embracing. Ecclus. 3. 5.
But what the limitation of this time
may be, no small question hath been
raised in the Church of God : ney-
ther doe there want extremities on
both sides : The Church of *Rome*
hath heretofore been excessively
large in her prohibitions ; forbidding
the solemnization of marriage upon
pretence of the holiness of the great
feasts to be observed ; for the whole
third part of the yeere ; neither doth
the account fall lesse, if we reckon
from the Advent to the Epiphany ;
from Septuagesima Sunday to the
Octaves of Easter ; and from three
dayes before the Ascension to the
Octaves of Pentecost ; all which had
wont to be strictly kept ; besides the
feast of *S. John Baptist* added by
some ; and the foure Ember weekes
by others ; but now of late upon se-
cond

cond thoughts, their Councell of *Trent* * have found it meet to shorten the restraint, and somewhat to enlarge the liberty of the seasons for marriage, having exempted the two only solemn feasts of Easter and the Nativitie, and abridged some previous weekes of the former : and for us how observant our Consistories had wont to bee of those inhibitions for their own gain, every Almanack can witnesse. Some worthy Divines in our Church did not stick to professe their great dislike of our conforming herein to the Church of *Rome*, to the scandal of the Reformed : Concerning both which, I must say : that if either wee or they doe put any holinesse in the time exempted, or any unholiness in the act inhibited, we cannot be excused from superstition, Can any time be more holy then Gods owne day ? yet on

* Concil Trid. Sess. 24.

that day wee doe commonly both publish marriages, and celebrate them. But if, as in some solemne fasts, indicted by the Church for some publique humiliation, we both doe, and injoyne to abstaine from all conjugall society; so in a desire the more devoutly to celebrate the memory of Gods infinite mercy to man kinde in sending a Saviour into the world for our Redemption; and of the glorious resurrection of that Son of God for our justification, we shall take off our selves from all worldly cares or delights, I see not why it should not be both lawfull and commendable.

But, to say as it is, as the Romanists are guilty of too much scruple in this kind, so too many of our own are no lesse faulty in a careless disregard of the holiest occasions of restraint, which I would to God it did not too palpably appear in the scandalous

alous carnality of many (otherwise inoffensive) professors. It is a common practise (which I have long wisht an opportunity to censure) that husbands and wives forget one another too soon : Scarce are their comforts fully cold , ere they are laying for a second match ; and too few months are enow for the consummation of it. Let me be bold to say, this haste hath in it too much not immodesty only, but inhumanity : If we look abroad into the world, wee shall find not among Gods peculiar people only, but even amongst the very Heathens, a meet (and not nigardly) intermission betwixt the decease of the one husband, or wife, & the marriage of another : A whole yeer was found little enough for the wife to mourne for her husband departed : and so is still amongst the very Chineses, though Atheous Pa-

* *Alex. ab. Alex. l. 3. Gen. dier. c. 7. Cod. l. 2. tit. 12*

gans ; And by the civill Lawes, a woman marrying within a yeer after her husbands death is counted infamous.

It was no short time that * *Abraham* (though now very old) breathed upon the death of *Sara* (the first of wives mentioned as mourned for) before he took *Keturah* ; and yet the Hebrew † doctors observe that there is a short letter in the midst of that word which signifies his mourning ; to imply (say they) that his mourning was but moderate : I am sure his sonne *Isaac* (*Gen.* 24. 67.) was not comforted concerning the death of that his good mother, till three yeers after her decease : At which time he brought his *Rebecca* into that tent which even still retayned the name of *Sarabs* : whereas with us, after the profession of the greatest decreesse,

* As appears by comparing of *Gen.* 23. 2. with 25. 1. † לבייתה *Gen.* 23. 2.

the old posie of the deaths-ring tells what we may trust to; *Dead and forgotten* : Who can but blush to read that some Heathens were faine to make lawes that the wife might not be allowed to continue her solempne mourning for her husband above 10 moneths; and to see that our women had need of a law to inforce them so to mourn for the space of one ?

In other Reformed Churches there is a determinate time of months set, untill the expiration whereof widowes (especially the younger) are not suffered to marry; it were more then requisite that these loose times were, here with us, curbed with so seasonable a Constitution ; but it were yet more happy, if a due regard of publique honesty & Christian modesty could set bounds to our inordinate desires; & so moderate our affections, that the world may see we are led by a better guide then appetite.

CASE.

CASE VIII.

Whether it bee necessary that marriages should be celebrated by a Minister; and whither they may bee valid, and lawfull without him.

IT is no marvell if the Church of Rome (which holds matrimonic a Sacrament, conterrings Grace by the very work wrought) require an absolute necessity of the Priests hand in so holy an act; but for us, who (though reverently esteeming that sacred institution, yet) set it in a key lower, it admits of too much question whether we neede to stand upon the terms of a Ministers agency in the performance of that solemn action: There are those in these wilde times that have held it sufficiently lawful for the parties having agreed upon the bargain before friends and witnesses, to betak themselves to bed

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others

others have thought this act of conjoyning the married persons in wedlock a fitter act for the Magistrate to undertake. And certainly if there were nothing in marriage but meere nature, it could not bee amisse that men and women should upon their mutuall agreement couple themselves together after the manner of brute creatures; And if there were nothing in mariage but meer civility the Magistrate might be meet to be employed in this service: But now that we Christians know matrimony to be an holy institution of God him selfe: which hee not only ordained, but actually celebrated betwixt the first Innocent payre; and which being for the propagation of an holy seed, requires a speciall benediction; how can we in reason think any man meet for this office, but the man of God, set over us in the Lord; to derive the blessings of heaven upon our heads?

heads? From hence therefore have our wholsom lawes taken a just hint to appropriate this service to a lawfull Minister only : so as what ever private contract may bee transacted in corners betwixt the parties affected to each other, yet the marriage knot cannot be publicly quit by any other hand then Gods Ministers. And herein certainly wee have just cause to bless the wisdom both of the Church and State, which hath so regulated these matrimoniall affairs; as that they are not only orderly but safely managed: For doubtless were not this provision carefully made, the world would bee quite over-run with beastliness, and horrible confusion : And in this point we may well give the Church of *Rome* her due, & acknowledge the wise care of her Lateran and Tridentine Councils, which have enacted so strict decrees against clandestine Marriages, and

have taken so severe a course for the reforming of many foul disorders in these matrimoniall proceedings ; as may be of good use for the Christian world : Had they done the like in other cases, their light had not gone out in a snuffe : As therefore it is generally both decreed and observed (not without excellent reason) in all Christian Churches, that marriages should be solemnized in the publick Congregation of Gods people ; so it cannot but be requisite that it should be done by him, who is ordained to be the mouth of the Congregation to God ; & the mouth of God to the Congregation ; And, as under the Law, the Priest was the man, who must conveigh blessings from God to his people ; so under the Gospell who can be so apt for this divine office, as he that serves at the Evangelicall altar ? And if all our marriages must be (according to the Apostles charge)

charge) made in the Lord, who is so meet to pronounce Gods ratification of our marriages, as he who is the protest Herald of the Almighty: As it is therefore requisite (even according to the Roman Constitutions) that hee who is betruſted with the Cure of our ſoules, ſhould beſides other witneſſes be both preſent & active in, and at our domeſtique contracts of matrimony: ſo by the laws both of our Church and Kingdome, it is neceſſary he ſhould have his hand in the publique celebration of them. There may then be firme contracts, there cannot be lawfull marriages without Gods Miniſters.

CASE IX.

*Whether there bee any necessity or use of
shrice publishing the contract of mar-
riage in the Congregation, before the
Celebration of it; and whether it bee
fit that any dispensation should bee
granted for the forbearance of it.*

THere were amongst the Jewes
certain ceremoniall Observati-
ons (besides the precepts) which they
called the hedg of the Law, and such
there cannot want amongst Christi-
ans; whose prudence must direct
them both to the ordaining, and
keeping of some such expedient
rules, as may best preserve Gods
lawes from violation: Of that kind
is this which we now have in hand;
This publique and reiterated denun-
ciation of * Bannes before matri-

* Concil. Trident. Sess 24 Decret. de Reformat
marrimon.

mony,

mony, is an institution required and kept both by al the Churches of the Roman-Correspondence, and by all the Reformed; amongst which, as ours, is most eminent, so it hath still expressed the most zeal and care of the due observing of so wholsom a Rite : fixe severall * Canons were made in our Provinciall Synod under the authority of King *James* of blessed memory in the year 1603. to this purpose, with as strict charges, restrictions and cautions, as the wit of man could in this case devise; and the late Directory hath found cause to second so usefull and laudable a Constitution : For the convenience, if not necessity, whereof, we need no other argument then the grievous mischiefes that have followed upon the neglect of this ordinance; that one were enough, which is instanced by the Triden-

* Constit. 62, 63, 101, 102, 103, 104

tine * Synod it ſelf; that ſome leud
perſons having ſecretly married
themſelves to one, take liberty to
leave that match, and publiquely
joyne themſelves to another, with
whom they live wickedly in a perpe-
tua'll adultery; the frequent practice
whereof in thoſe hotter climates we
may eaſily beleewe; when wee ſee
**that in our own more temperate re-
gion, the feare of hanging cannot
hold ſom off from ſo foul a ſin. Let
me add hereunto the late experi-
ments of ſom odiously inceſtuous
marriages, which even by the rela-
tion of our Diurnalists) have by this
means found a damnable paſſage, to
the great diſhonour of God, and
ſhame of the Church; And hereup-
on the ſad iſſue of ſtoln Marriages,
wherein Parents have been moſt fe-
loniouſly robbed of their Children,
are too feelingly known, & irrecog-**

* Concil Trid. u i ſup a.

verably

verably lamented : But as for unfitness and inequality of matches, both for age and condition (to the too late repentance and utter undoing of both parties) they are so ordinary, that they are every dayes Occurrences : And all these evils have sensibly grown from the want of these publique denunciations of Bannes ; partly upon the unhappy throwing open of the fence of discipline , and partly upon the surreption of secretly mis-gotten dispensations ; And though that forementioned Synod of ours, seconded by royal authority, took * the most probable course that could be conceived (the liberty of those Faculties being continued) for the preventing of these abuses ; as the restraint of the grant of them by any other, save those who have Episcopall authority ; and security to bee

* Constit. and Canons *ut supra*. Can. 101, 102, 103.

given upon good bonds that the coast is cleere from all precontracts, suits of law, and prohibited degrees; that the full consent of parents or Guardians is had; that the marriage shall bee celebrated in the parish Church where one of the parties dwelleth; and lastly the oathes required of two sufficient witnesses (one whereof known to the Judge) that the expresse consent of parents or Guardians goes along with the match intended; and that there is no impediment from any pre-contract, kindred or alliance: Yet notwithstanding all this prudent caution we have by wofull experience found our offices cheated, facultys corruptly procured, and matches illegally struck up, contrary to the pretended conditions: Whereas all this mischief might have been avoyded, if as no marriage may bee allowed but publick; so those publick marriages might

might not bee celebrated but after thrice publication of the contract in both the parish Churches where the persons contracted are known to inhabit : For so both the Parents of either side cannot but be acquainted with the ingagements of their children ; and if there be any just hindrance, eyther by precontract, or by proximity of blood , or affinity, it cannot bee concealed ; that so the snare of either an unlawfull or prejudiciall matrimony may be seasonably eschued : To this good purpose therefore it is no lesse then necessary (as I humbly conceive) to be both enacted and observed, that no marriage should bee allowed of any person whatsoever (except perhaps the Peers of the Realme, who are supposed to bee famously known through the kingdom) without a solemne publication of their contracts at three severall meetings to the Congregation

gregation aſſembled ; and that there may no diſpenſation at al be granted to the contrary upon any whatſoever conditions : And if ſom pretend baſhfulneſſe, others feare of malicious prevention (as the Tridentine Doctors ſuggeſt) yet it is fit that both ſhould vaile in the inevitable danger of thoſe miſchievous inconveniencies which follow upon theſe clandestine matches , and ſilent diſpenſations.

C A S E X.

Whether marriages once made may bee annulled, and utterly voided; and in what caſes this may be done.

IN what only caſe a divorce may be made after a lawful marriage you have ſeen before ; now you enquire of the annulling or voiding of marriages made unlawfully : which doubtleſſe

doubtlesse may bee done by iust authority upon divers well-grounded occasions: For as it is an indispensible charge, *Those whom God hath joyned together let no man put asunder*; so it no lesse truly holds on the contrary; Those whom God hath forbidden to be joyned, let no man keep together.

Our Casuists are wont to bee very copious in this subject, distinguishing betwixt those impediments which may hinder a Marriage from being made, and those which may undoe and void the Marriage once made. They insist upon many particularities of both kinds; and som, perhaps too many, I shall instance only in those of the latter sort which are unquestionable; whereof the first shall be a mis-prison of the match; when one party is mistaken for another; as when he who by a full contract consented to marry with *Anne*,
is

is by a fraudulent substitution put up on a marriage with *Mary*; whether upon the likness of the woman, or the want of a discerning sense in the man; or by some cunning conveyance of the perfidious contrivers; for certainly it is the consent that makes the marriage; & if the hearts be not joined together by mutuall agreement & affection, the coupling of the hands is but a ceremony utterly ineff. etual; I doubt not but it was in *Jacobs* power to have disavowed the match with *Leah*, whom his father in lawe had deceitfully obtruded upon him being more injurious in changing his wife, then in ten times changing his wages; since his heart was not accessory to that match, which the darkness of the night, and subtlety of a *Laban* had drawn him into.

The like case is in the marrying a bond-woman in stead of a free; a base plebeian in stead of a person of honour.

honour: As then we use to say that mis-reckoning is no payment, so we may well affirm that a mis-marriage is no true wedlock; and therefore justly to be branded with a nullity.

A second my bee the foedity and unnaturalness of the match; when the parties incestuously marry within the first collaterall degree of Brothers and Sisters; the very mention wheteof, even nature it self, not depraved, abhorres: so as I cannot but wonder that the Romane Schoole should bee so much divided in this point, whiles * *Bonaventure, Richardus* and *Durand* hold such a marriage even by Divine Lawe, a nullity; contrarily *Aquinas, Cajetan, Thomas de Argentina* and others (whom *Covarruvias* recites) defend this to be only an impediment by the Canon law, and therefore that it may be in

* *Martin. Alphons. Vivald. Candelab-aureum de Matrim. & partic. de Consanguin.*

the Popes power to dispence with so foul a matrimony; Against whom upon better reason, * *Scotus*, and *Dominicus à Soto* prove such marriages by the law of nature to be utterly void and null; with whom all ingenuons Christians cannot but willingly concur in their judgments.

A third may be the horribleness of a crime committed in the way to a wicked match, and that of two sorts; the one of murder, the other of adultery: The former, when the wife hath conspired with the adulterer to murder her husband, with an intent to marry the murderer; or in the like case the husband to murder the wife.

The latter when a man living in a known adultery with another mans wife, contracts matrimony with the adulteresse in the life time of her husband.

* *Scot. m. 4. d. 40. Sol. ibid. q. un. art. 4.*

A fourth, is the indissoluble knot of marriage with a former still surviving husband or wife ; the force whereof is such, as that it frustrates and voideth any supervening matrimony (except in the case specified in the foregoing discourse of Divorce) during the naturall life of the consorts. Many unhappy, and perplexed cases have we met withall in this kinde ; neither doth it seldome fall out, that the husband being confidently reported for dead in the warres, or in travell abroad ; the wife after some yeers stay , and diligent inquisition , finding the rumor strongly verified by credible testimonies, and tendred oathes, begins to listen to some earnest suitor ; and bestowes her self in a second marriage ; not long after which, her only true, revived husband returnes, and challengeth his right in that his lawfull wife ; pretending the mis-carriage of letters

letters and meſſages ſent by him in that forced abſence. In this caſe what is to be done? The woman hath caſt her ſelf upon the danger of a Capitall law, except ſhee have expected the time limited by ſtatute; or if ſhe eſcape, one of the husbands is to ſeek for a wife, whom both may not enjoy: Doubtleſs the ſecond marriage is by Eccleſiaſticall authority to bee pronounced, as it is, null; which indeed never had any true right to be: and the firſt muſt be content to ſwallow its own inconveniences.

A fifth, may be a violent enforcement of the match: when a woman is upon fear of pain, or death compelled to yeeld her ſelf in marriage, and is not perſwaded, but affrighted into the bonds of wedlock: ſurely this is rather a rape then a matrimony, and therefore, upon utter want of conſent, a nullity.

A ſixt may be a preceding, irremediable

diabie impotency, or incapacity of marriage duties; whether naturall, or advantageous; whether by way of perpetuall maleficiation, or casualty: I say, preceding; for if any such disability be subsequent to the marriage, the nullity is avoided; But if the persons find in themselves beforehand such remediless incapability of a marriage estate, they shall be highly injurious to each other, and shall foully abuse the ordinance of God, in their entring into such a condition: for it is apparent, that the main ends of marriage are herein utterly frustrate; which were by Gods appointment, the propagation of mankind, and the remedy of incontinency; neither of which being attainable in such a defective estate of body, justly is such a match pronounced a nullity.

But here I cannot but take occasion to commend the modesty of the women

men of our nation ; amongſt whom, there are ſo rare examples of ſuits in this kind, proſecuted in our Eccleſiaſtical Conſiſtories; it is not to be doubted but there are many defects of this nature to bee found every where, yet ſcarce one in an age offers to complain and call for redreſſe : ſo as it ſeems they are willing to ſmother all ſecret deficiencies, in a baſhfull ſilence; whereas thoſe of other warmer regions impatient of the wrongs of their conjugall diſappointments, fly out into open conteſtations, and feareleſly ſeek for thoſe remedies which the lawes provided in ſuch caſes will allow them. Certainly the merit of this modeſt temper is ſo much the greater, by how much more it is concealed from the world; and thoſe of either ſexe that are content to bite in their hidden grievances of this kinde, are worthy of double honour

honour from thole Consorts, whose
injurious infirmities they both
have not disclosed, and suffer in
suppressing.

A D-

6-2-20

1947-1948



ADDITIONALS.

Certain Cases of doubt, besides the formerly published, having been proposed to me, and received a private solution; I have thought fit upon the address of a second Edition, to adjoyn them to their fellows, for the satisfaction of any others, whom the same Cases may concern.

CASE I.

Whether a Marriage consummate betwixt the Uncle and Neece bee so utterly unlawfull, as to merit a sentence of present separation.

RESOLUTION.

WHat prodigious Matches have beene of late made, and are still continued, upon advantage taken of the unsettlednesse of the times, I had rather
silently

silently lament, then openly proclaim to the world : Such as are not capable of any Apology; call for our blushing and teares; but there are some others which dare stand upon the termes of defence : Such is this which you have here propounded on the behalt of your friend, whom it seemes a mis-learned Advocate would faine bear up in a course altogether unjustifiable; that cause must needs be desperately ill; that can find no mercenary abettors : His offensive marriage with his Neece is hartned by a sophisticall pleader; whose wit and skill is so ill bestowed in this case, that I wish his fee might be perpetuall silence : but when hee hath made use of his best art to so bad a purpose, those colours of defence, wherewith hee thinks to daub over so foule a cause, will prove but water-colours, which shall easily be wash'd off by this present confutation.

It

It was lawfull, he saith, before the Leviticall Law, thus to Match: So were worse Marriages then this: Let him tell me that *Cain*, and *Enoch*, and *Seth* married their owne Sisters, as *Saturne* also did; by the report of *Di-dorus Siculus*; Necessity made it then not unlawfull: It is a just rule of ^{*} law; Those things may not be drawne into precedent, which have been yeelded upon meer necessity; as we use to say; Necessity hath no law, so it can make none, Afterwards, as mankinde grew, nature it selfe taught men to keep further aloofe from their owne flesh; and still remotenesse of distance enlarged it selfe with time,

Abraham (saith hee) married his neece *Sarah*, *Gen.* 11.29. (if at least *Sarah* were *Iscah*) *Nahor* his neece *Milcha*, *Amram* his Aunt *Jochebed*;

^{*} In Argumentum trati nequeunt, quæ propter necessitatem sunt concessa

and these not without a large blessing upon the bed. Let him tell me also, that *Jacob* married two Sisters, and conversed conjugally with both (which were now shamefully incestuous) yet was herein blessed with the issue of six of those *Patriarchs*, who were the root of those glorious stemmes of *Israel*. If we should speak most favourably of these conjunctions, to ranke them under *malum quia prohibitum*; it must needs follow, that till the prohibition came, they could not bee censured as evill: Though good Authors make it justly questionable, whether these fore-alledged marriages should deservedly bee charged with a sin, or excused by Gods extraordinary dispensation, in the meane time the blessing was to the person, not to the act, even *Lots* incestuous copulation with his daughters sped well, two famous nations sprang thence, & of one of them, the

the gracious progenitricce of the Saviour of the world; Yet this is no plea for the allowance of that monstrous conjunction. After the law, one justifiable example were worth a thousand before it.

Lo, good *Caleb* (saith he) married his daughter *Achsah* to his brother *Othniel*. *Joshua*. 15. 16, 17. Indeede, this case comes as home to the businesse as it is farre off from the text. See whether mis-prision of Scripture may mislead us: a man that understands nothing but the english, or vulgar latin, may easily run into so foul an error; weigh but the place well, & you will soon find the fault without me; *Othniel* the son of *Kenaz*, *Caleb*'s brother, tooke *Kerath-Sepher*, and *Caleb* gave him *Achsah* his daughter to wite; The English wanting cases expressees it doubtfully, it will be cleare in the Latin; as *Montanus*, and *Pagnine*, two great Masters

of the Hebrew in their *Interlinear*, read it, *Othniel filius KenaZ, fratris Calebi*; *Othniel* the sonne of *KenaZ*, which *KenaZ* was *Caleb's* brother, both the Hebrew & Chaldee cleare that sense: So the *Septuagint*, as *Emanuel Sa* also urges upon that place *Judg. 1. 13.* expressly say that *KenaZ* was the brother of *Caleb*, and not *Othniel*; wherein yet I cannot much blame an unballanced judgement, whiles I find the *Septuagint* contrary to themselves: For in *Josh. 15. 16* they say *Othniel* was *Caleb's* younger brother; In *Judg. 3. 9.* they say, *KenaZ* the father of *Othniel* was so; for which there is no excuse, but the large sense of a brother in the Hebrew, *We are brethren*, saith *Abraham* to *Lot*, yet he was *Lot's* uncle: so was *KenaZ* a progenitor to *Othniel*; for *Caleb* is stiled the son of *Jephunneh* the *Kenezite*, *Josh. 14. 14.* & *Num. 32. 12.* The case was only this, *KenaZ* was

was the ancestor of *Caleb*, and one of the same name was his brother, the father of *Othniel*: what can be more plain then 1 *Chron.* 4. 13. And the sons of *Kenaz*, *Othniel* & *Seraiah*; So as if wee take this most strictly to the letter; it implies nothing but the marriage of two cozens german, *Othniel* the son of *Kenaz*, and *Achfab* the daughter of *Caleb*, brothers children, as *Bucer* upon the place, *Melanchton* in his Tract *De Conjugio, Funnis*; and indeede, who otherwise? And now by this time you see what a poore ground this is to build upon; rather, you see a castle, not built on the sand, but in the ayre; meer misconceit.

But, saith the Advocate, this marriage is no where directly forbidden in the Law; I must tell him it is but a meer shuffle to stand upon the terms of a direct prohibition, when there is one no lesse forceable & convictive:

Two wayes may ought be effectually forbidden in the law, Either in plain expreſſion of terms, or in clear implication of ſenſe; ſurely, that is rather more in the law which it means irrefragably, than what it verbally expreſſeth: now, however this be not in the letter of the law, yet in the ſenſe it is: the ſame law that forbids the nephew to marry the aunt, doth *eodem operâ*, forbid the uncle to marry the neece; In regard as of acerneſſ, yea identity of blood, the caſe is the ſame: however, ſom inequality may be conceived in reſpect of government & ſubjection. And it upon ſom œconomicall termes, it be more unfit for a Nephew to marry his Aunt, than for an Uncle to marry his Neece, yet in regard of blood and that bodily conjunction, which God principally aymes at in this prohibition, what difference can poſſibly bee conceived? Nature hath
made

made no other distance betwixt the Nephew and the Aunt, than bewixt the Neece & the Uncle: or if there be any, they must be sharper eys than mine that can discern it: God himself (me thinks) hath put this out of doubt; the reason wherewith hee backs his command is irresistible; The Nephew shall not marry the fathers sister; why so? *For she is thy fathers neer kinswoman, v. 12.* LO it is the neereness of blood that makes this match unlawfull, not respect of civil inequality; Where the blood then is equally neere, the marriage must be equally unlawfull.

That rule of law which is pretended, *in prohibitoriis, quicquid non prohibetur, permittitur.* What is not forbidden, is permitted, had neede of a fair construction; Indeed, that which is not forbidden either in words or in necessary analogy & implication of sense, is supposed to be left at large,

But what place hath this Axiome in a caſe not leſs really forbidden than the expreſſed? And if wee ſhould ſtrictly follow the letter of this Maxime, it would lead us into *Sodome*: ſince there are marriages not ſpecified, which would be monſtrouſly inceſtuons, & ſuch as honeſty would bluſh to mention, as ſhall appeare in the ſequelle.

Neither is there any more force in that other, *In pœnalibus non fit extenſio*, That penall lawes ſhould not bee ſtretcht further then their words import. Certainly in ſom ſenſe, I know no law that is not penall: but why this law, *Thou ſhalt not marry thy Aunt or Neece* ſhould be rather penal, than, *Thou ſhalt not commit adultery*, I know not; I am ſure learned *Zanchius* accounts theſe of the 18. of *Leviticus*, equally morall: and *Bucanius* holds them to be againſt the law of nature.

And if in humane laws this axiom
may

may challenge a place, yet in the roy
all laws of our Maker, where, under
one sin mentioned, all the species &
appendances, and the whole claim of
that wickednesse is wont to be com-
prised, doubtless it is utterly unsuffe-
rable: Neither is here any extensi-
on of this prohibition beyond those
limits which God hath fixed in the
undoubted sense of his law. In the
seventh Commandement, nothing is
expressed but *adultery*, shall we there-
fore say neither *fornication*, nor *pollu-
tion*, nor *sodomie* is there forbidden?
were not this to destroy that lawe,
which God makes to be spirituall,
and to open the flood gates to a tor-
rent of licentiousnesse? surely, it is
easy to observe that Gods Spirit no
lesse meanes that which he pleaseth
to suppress. The Psalmist sayes, *Pra-
motion comes neither from the East, nor
from the West, nor from the South*, Psal.
75. 6. Shall we therefore say, Is is

from the North : Is not that coast equally excluded, though not expressed : It is too much boldness to hold God too strictly to syllables, when it is easie to determin what he meant to imply : These rules then are useless : Let me see now if the Advocate can as easily shake off one or two rules of law, which I shall return upon him in lieu of his. *Is committit in legem, &c.* Hee wrongs the law who keeping close to the letter, strives against the intent and purpose of the law : And that other not unlike, *In fraudem legis facit qui salvis verbis legis sententiam ejus circumvenit*, If this be not the case in hand, I shall profess to know nothing.

From rules, let us look to authorities, It is directly maintained (hee saith) by the Canonists and Scholemen ; but what is it that is so maintained ? Not this match (let no man think so) but that proposition, *viç* :
that

that this match is no where directly forbidden in Gods law, If wee take it of expresse terms, no wise man ever denied it; not Canonists & Scholemen only, or those few named Authors, but all reasonable men concur in this truth; what needs a citation of some, where all agree? But if we take it of the necessary & cleare sense of the law by just Analogy and infallible implication, now, none of the forecited, or any other orthodox Authors will deny the certaine and indubitable prohibition of this marriage. How well the rest will speed, judg by their fore-man, *Tho: Aquinas* who expressly determines it a false position, that those are joyned together by God, who match within the fourth degree, whereasthis is in the third; Not to say how stiffly *Peter Lombard* urges the unlawfulness of marriages to the very seventh degree, *vel quousq; parentela possit agnoscī*, even

as farre as the kindred may bee diſcerned, following herein Pope *Gregory* and *Nicholas* : To ſhut up ſhort, none of all his cited Authors dare be any other then professed enemies to this match ; no leſſe, then the moſt zealous Commiſſioner of that now aboliſhed Court, whoſe late ſentence is upon Record enough to this purpoſe.

As for *Lyra*, who iſtrailed in here, and cited ſtrongly in *Othniels* Caſe, what ſhall I ſay ? It grieves my ſoul to ſee any well-minded Chriſtian ſo abuſed by miſ-information : This author hath thus *Turpitudinem ſororis, &c.* Thou ſhalt not uncover the nakedneſſe of thy Fathers ſiſter, or thy Mothers ſiſter (*& eodem modo*) and in the ſame manner is forbidden the marriage betwixt the brother, and the daughter of the Aunt, for it is the ſame degree, ſo *Lyra* : Nothing can be more peremptory againſt this caſe
in

in favor of which he is alledged.

This would be the issue of all the rest, if it were worth the while to examine them, in that, which yeelded, nothing advanceth the cause of the producer. They are all as professed enemies to this match as my selfe; only they deny an expresse mention of this cause, which was never either thought needfull, or intended to be pleaded.

For the Protestant Divines which are cited to give testimony to the non-prohibition of this marriage, I must cry shame upon those false hands which have so palpably abused both your friend & the Authors: Let me give but a taste of some, *Melanchthon Zanchius, Bucanus*, who are said to allow the match, by admitting only the degrees mentioned to be prohibited; No place is instanced; *versatur in generalibus*, You know the word, but let your eyes be judges of their

their opinion : *Melancthon* mentioning the marriage of *Abraham* and *Sarah*, in the second degree : *Hoc gradu* (saith he) *in linea inequali &c.* In this degree in an inequall line ; marriages are forbidden by Gods law, because God doth universally ordaine a greater reverence to be yeelded to a superior degree, then to an equall : It is the very case in hand, which *Melancthon* thus sentenceth : For *Zanehius*, he citing the Text of *Levit. 18 13.* Thou shalt not uncover the nakednesse of thy Mothers Sister ; adds, *ergo neq. mater teram, &c.* Therefore no man (saith he) may marry his Aunt, and that charge which he gives concerning the Aunt would God have to bee understood also of the Uncle, which is the Fathers brother, or the Mothers brother, whiles he adds a reason of the prohibition, For she is the neer kinswoman of thy Father or Mother :

Thus

Thus *Zanchinus* in his book *de Operibus Dei*. Lib. 4. *de Sponsalibus*, who absolutely condemnes this marriage as incestuous, and indispensable.

Bucanus, moving the case of *Abrahams* marriage with *Sarah*, and *Amrams* with *Fochebed* &c. Leaves it in doubt whether these men were (as the times stood) particularly dispensed with by God, or whether they sinned in thus marrying, even before the law, against the law of nature, by which he holds these matches utterly prohibited; With what forehead then could any Scholar obtrude these fals allegations upon an honest client, whether to draw his foot into a snare, or to keep it there, under pretence of favoring what they professedly oppose.

As for the moderne Jewes, to whom he stretches out his hand for succour, it matters little what they now teach or do; they are not more
with

without God, then without honesty, or credit; Their opinions are fabulous, their judgement frivolous, and their practise not worth our knowledge or regard.

I rather descend to the resolution of our owne Church; That our ever honoured Mother hath passed her condemnatory sentence upon this marriage in her ratification of that Orthodox and just Table of forbidden degrees, set forth by authority under Archb. *Parker*, what doubt we now? Do we acknowledg the Oracular Voice of our dear and holy mother the Church of England, and yet question whether we should obey it? Certainly in a case of Conscience, a dutifull son (mee thinks should rather hold fit to follow the sacred determination of the Church, then the municipall Acts of the civill state. It is an ill office of those that would set Church and State, Canons and Statutes,

tutes together by the eares even in these points wherein they are perfect friends.

The statute of 32 of Henry 8. c. 38. intending to marre the Romish market of gainfull dispensations, and injurious prohibitions, professeth to allow all marriages that are not prohibited by Gods law, such is this in hand, prohibited, though not in the Letter, yet in necessary inference and interpretation. The Canon 99. of 1603. hath thus: No person shall marry within the degrees prohibited by the lawes of God, and expressed in a Table set forth by authority, in the year 1563. and all marriages so made and contracted shal be adjudged incestuous and unlawfull.

What scruple can arise hence? here is a perfect harmony betwixt Statute and Canon. It is a meer Cavill (no better to take And for Or, as if the meaning were, that all degrees, whe-

whether prohibited by the lawe of God, or expresse in that Table are forbidden : This is a foule straine both to Grammer and to the sence and scope of the Canon, which plainly intends to aver that all those degrees prohibited in that table are also forbidden by the laws of God. A truth so certain, that if either self-love, or love of gaine did not betray the eye, it is a wonder how it should abide a contradiction.

It is observable that neither statute nor canon speak of an expresse prohibition in Gods law, And the Canon purposely distinguisheth the termes prohibited by Gods law, and expressed in the Table, as justly supposing there may be as strong a prohibition in a sence implied, as verbally expressed : Else, if our Lawes (as is pretended) should give allowance (which God forbid) to any marriages not expressly *in terminis*,
for-

forbidden; wee should have strange and uncouth mixtures.

God by *Moses* expressly forbad the uncovering the nakedness of Father and Mother; hee expressed not the nakednesse of Son and Daughter: he expressly names the nakednesse of the Fathers wife, he expresseth not the nakednesse of the Mothers husband: He expressly names the nakednesse of thy Sister, he expresseth not the nakedness of thy Brother; he expresseth the nakednesse of thy Sons Daughter, he expresseth not the nakednesse of thy Daughters Son: He expresseth the nakednesse of thy Fathers wives Daughter, he expresseth not the Mothers Husbands Sonne; he expresseth the Fathers Sister, not the Mothers Brother: He expresses the Daughter in law, not the Son in law. So as by this Rule, if it should be carried only by meer verball expressions, a woman might marry her
Son

Son in law; the Nephew might marry his great aunt, the neece her great uncle; the Daughter might marry her Mothers husbands Sonne; the Grand-mother might marry her Daughters ſon; the Daughter might marry with her Mothers Husband; Were theſe things to be allowed, the world would be all *Sodome*: Theſe things therefore are of neceſſity included in the law by a clere Analogy; no leſſe then if they had beene expreſſed.

But have there been, as hee ſaith, precedents of this match? I am ſorry to heare it; ſurely, the more the worſe and the more need to redreſſe it; the addition of this, if neglected, would help to ſtrengthen an ill claim.

Cozens-german, he ſaith, have beene allowed to marry; What is that to the preſent caſe? The difference is as much as betwixt a Nephew and an Uncle; The Uncle hath

hath too much of the Parents both right, and blood, to challenge an equal claim with a Cozen.

In the shutting up, it pitties me to see your worthy Friend driven to this plea; and like a drowning man to snatch at so small a twig: *Being done* (he saith) *it ought not to be undone.* Alas, the Canon is peremptory. It is incestuous and unlawfull; what plea is there for continuance? Speak not therefore of either connivence or dispensation; This match is only capable of a late, but much wished repentance on the Offenders part; and a just diremption on the part of the Judges.

CASE.

CASE II.

*Whether it be lawfull for a Man to
marry his wifes Brothers widow.*

Amongst all the heads of Case-
Divinity, there is no one that
yeeldeth more scruples, then this of
Marriage; whether we regard the
qualification of the Persons, or the
emergency of actions and events. It
is the lawfulness of this match that
you inquire after, not the expedience
and I must shape my answer accor-
dingly.

It hath been the wisdom and care
of our godly and prudent Predeces-
sors, to ordaine a Table of all the
prohibited degrees to be publicly
hang'd up in all the severall Chur-
ches of this Nation; to which all
commers might have recourse for
satisfaction: This Catalogue you
have perused, and find no exception
of

of the case specified; I know no reason therefore why you may not conclude it not unlawfull.

The question of the Expediencie would require another debate, doubtless; in all cases of this nature, it must needs be yeelded that it were more meet and safe (since the world yeilds so large a latitude of choice) to look further off; a wise and good man will not willingly trespassse against the rules of just expedience: and will be as carefull to consider what is fit to be done, as what is lawfull, but that comes not, at this time, within your inquiry.

Whiles therefore I give my opinion for the lawfulness of this Marriage with the Relict of the wifes brother, I doe no whit clash (as you suggest with the judgement of *Beza*, and *Master Perkins*; who professe their dislike of such copulations: I shal as readily cry them down for unmeet, and

and inconvenient, as those, that with too much boldnesse come over neere to the Verge of a sinfull conjunction, but for the not unlawfulness of this match, I did upon the first hearing give my affirmative answer: and the more I consider of it, I am the more confirmed in that resolution.

That universal rule mentioned by you, as laid down by those two worthy Authors, must indure a limitation; *Cujus non licet inire nuptias, ejus nec conjugis licet*; that there is the same degree and force of relation of a third person (in the case of Marriage) to the husband and to the wife; so as proximity of blood in the one, should not be a greater bar then the same proximity of alliance in the other; Otherwise, many more copulations will fall under censure, then common practise will condescend unto; and that ground of, *uxor pars quadam*

quædam virt, The wife is as a part of the husband, as it holds not in naturall relation at all, so not in all conjugall; as might be too easily instanced in divers particulars.

And if there were not som difference in these relations, those second persons which are interess'd in the Husband or Wife, might not come neer to the next in affinity to them; For example, my Brother may not marry my Sister, therefore by this rule, he might not marry my Wives Sister, and so it should bee unlawfull for two Brothers to marry two Sisters, then which nothing is more ordinary or lesse obnoxious to disallowance.

That generall rule therefore, must be restrained necessarily to the first ranke of affinity; if we descend lower it holds not. For further explanation, our Civilians and Canonists are wont to make two kinds or degrees

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of Affinity, the one primary, the other secondary; In the first is the affinity between the husband and the Cozens of blood to his wife, or *è cō-verſo*; which indeed is juſtly held no leſſe for a barr of marriage then his own naturall conſanguinity; for that is an affinity contracted upon intereſt of blood, by virtue of that entire union between Man and Wiſe, whereby they both become one fleſh; The Secondary affinity is that wherein there is another perſon added moreover to that firſt kinde now mentioned; the affinity ariſing only from the intereſt of an affinity, formerly contracted, not from conſanguinity; and this is not ſo binding as either to hinder a marriage to be contracted, or being contracted, to diſſolve it.

In this rank are the brothers wife and ſiſters husband, and therefore, upon the deceaſe of the brother and ſiſter, the husband of the ſiſter de-
ceaſed,

ceased, and the wife of the deceased brother may marry together, as Dr. *Nicholaus Everhardus* out of *Richardus de Media Villa*, and *Panormitan*, hath cleerely determined *; Of this kind is the marriage now questioned which therefore doth not fall within the compasse of the prohibition, *Secundum genus affinitatis, &c.* The second kind of affinity, which is by a Person added unto the first kinde is no bar to Matrimony; And with this judgment I find no reason why I should not concur; but if any man think that he sees just ground to entertaine a contrary opinion, I pre-judge him not, but modestly leave him to the freedom of his owne thoughts.

* Confil. Matrimonial. Germanor. Confil. 5.

CASE III.

Whether an inceſtuous Marriage contracted in ſimplicity of heart be twixt two Perſons ignorant of ſuch a defilement, and ſo farre conſummate as that Children are borne in that wedlock, ought to be made known and proſecuted to a diſſolution.

IT is a queſtion (as it may be put) full of doubt and intricacy, Parallel whereunto, and eminent in this kind, was that caſe, which I had long ſince from the relation of M. Perkins; and ſince that, have met with it in the report of two ſeverall German Authors.

The caſe thus : A Gentlewoman of great note in thoſe parts, being left a Widow, had her ſon trained up in her houſe; who now having paſſed the age of his puberty, grew up as in ſtature, ſo in wanton deſires, earneſtly

ly soliciting her Chamber-maid to his lust ; she had the grace not only to repell his offers, but being wearied with his wicked importunity, to complain to her Mistrresse, of his impetuous motions : The Mother out of a purpose to repress this wild humor in her Son, bids the maid, in a seeming yeldance to make appointment the night following with him, at which time shee would change beds with the maid, & schoole the young man to purpose. This being accordingly done, the Devil so farre prevailed with the Mother, that instead of chastising, she yeelded to the lust of her Son , and by him conceived a Daughter : & now finding her self to grow big , for the hiding of her shame, she retired secretly to a remote part of the country, where she unknowne left the burden of her wombe, and took order for all care & secrecy of education : After som

yeeres the Mother thinks fit to call home her concealed issue, under the pretence of a kinſwoman, and gives her ſuch breeding in her houſe, as might become the Child of a friend; The maid grew up to ſuch comelineſſe, both of perſon and behaviour, that the Sonne, now grown a Man, fell into paſſionate love with her, & in ſhort, married her; little thinking that hee was now matched with his owne Daughter, he gotten by him of his own Mother: They lived lovingly and comfortably together, and had divers children betwixt them. Only the Mother, who was alone conſcious of this monſtrous copulation, began to finde an hell in her boſom; and in a deep remorse, made the caſe, at laſt known to ſome learned Divines of that time, who beſtowed many ſerious thoughts upon ſo uncouth a buſineſſe; and finally agreed upon this determination. That
all

all circumstances thoroughly weighed, the penitent Mother should after a sound humiliation secretly make her peace with God, for so foul and prodigious a sin; but that the knowledge of the horrible incestuousness of this match, should still and ever, be concealed from the yong couple, who thought of nothing but a faire and honest legality in this their conjunction.

The decision of this point comes somewhat home to yours; to spend my opinion therefore in this case, I find no reason, all things considered, to vary from their judgment.

I say then, that the Mothers sinne was not more hainous in yeilding to so abominable an act of incest with her Son, then in smothering the seasonable notice of it for the preventing of a worse incest with her Daughter; for that first act of her incest was transient, but this incest which was

occasioned by her silence was permanent, and derivable to her posterity : She ought therefore, though to her perpetuall shame, when she saw an inclination in her Son, to so foully unnaturall a match, to have forestalled it by a free confession, and to have made him sensible of so odious a procreation : Which not being done, it must needs be said, that, as the first act of the Sonne was a voluntary fornication, but an involuntary incest; so this incestuous copulation of the Son with the Daughter, was involuntary in them both; and there cannot be an actuall sinne, wherein there is not a consent of the will.

On the one side, it is shamefull to thinke that so grievous a sin should passe without som exemplary censure, & that so foule blood should be propagated to succeeding ages, for want of the timely intervention of

a vindicative authority; but on the other side, it would be well considered what miserable inconveniences, yea mischiefs would follow upon so late a discovery; First, all honest hearts are put into a just, but unprofitable horror, to think that such a flagitious wickedness could be committed; Then the Mother, who had rinsed her soule with a fountain of teares, for so hatefull a miscarriage, and reconciled her self to that God, who was the only witness of her sin, should bee so late exposed to the unseasonable shame of that world, w^{ch}, never was privy to her offence.

As for the yong couple thus prodigiously conjoyn'd, how could they choose, upon the too late notice of their so deplorable condition, but run mad for anguish of soule, and weare out the rest of their dayes in shame and sorrow: And for the children born to them in so detesta-

ble a wedlock, whom they had formerly beheld with complacence & comfort, as the sweet pledges of their conjugall love, how must they now needs look upon them, as the living monuments of their ignominy; and loath them as the most basely begotten imps of a worse then bestiall copulation. And when riper age should bring that unhappy off spring forth into the world how should they be every where pointed at, & hooted after as som strange aberrations of nature; all which are avoyded by this secrecy.

But if on the other side you shall reply that this one evill is more, then equivalent to all these; that in the meane time, these parties live in a continuall Incest, and traduce it to following generations; I must put you in minde to distinguish betwixt the state of Incest, and the Sin of Incest. It is true they live in a state of In-

Incest, but, from the sin of Incest they are excused by an ignorance, altogether invincible; an ignorance both of the originall fact, & of their mutual relations; for it is to be supposed, that had they had the least intimation of the natural interest of father & daughter, they would with much indignation have desired to fowl a cōmixture, which even brute creatures (if wee may beleieve histories) have by the instinct of nature abominated, & upon after knowledg, revenged.

And if any light of knowledge had broken forth unto the parties, of that condition wherein they stood, then to have continued under that state of Incest, but an houre, had been damnably sinful; now all those inevitable consequences of shame & horror must have been sleighted & forgotten, and must have shut up in a sodain dissolution.

But as there are many degrees of Incest, and the sin is so much more, or lesse haynous, as the parties are neerer or more remote; I perceive the case intimated by you, concerns a lower ranke of incestuous copulation, namely, an incest arising from a mans carnall knowledge of a person too neere in blood unto her, whom he afterwards marrieth; The fact known only by one, who now doubts whether he be not bound to reveale it : And why not sooner, when so faulty a match might have been prevented? why so late, when the remedy intended, would bee as noxious as the disease? Why at all, when there is no necessity or use of the revelation? This question starts another more universall, how farre we may or ought to mak known the secret sin of another? Doubtlesse to prevent som enormous act, which may follow upon our silence; or upon

on the urging of lawfull authority, when we are called to give evidence concerning a fact questioned; Or to antevvert some great danger to the publique, to our selves, to our friend, we may, & must disclose our knowledge of a closs wickedness; Or if the act be so haynously flagitious, and redounding to so high dishonour of God, as that our Conscience tells us shall participate of this sinne in concealing it; our holy zeal shall herein bear us out in a just accusation; although in this case, heede must be taken, that our single crimination may be so carried and made good by circumstances, that it draw us not into the perill of a slander; But, without these, I cannot see, that the revealing of a secret sinne, can be construed any otherwise than an act of Detraction; than which, nothing can be more odious and prejudiciall to humane society: Wee have learn'd
from

from *Aquinas* that there are eight wayes of this hatefull practise; whereof foure are direct; the raising of a false crime, the amplifying of a true crime; the disclosing of a crime secret, and the sinister construction of anothers fact. To these I must adde, that even where the act is such as challengeth a revelation, the time may bee unseasonable and past the date. You know that the notice of treason, if too long smothered, drawes the concealer into danger: and in this case, though there be no perill in the silence, yet there may be injury: Shortly, this sinne, if ever, should have been so early made known to the party concerned, as might have prevented the making up of a match secretly sinfull; and have convinced the agent of a foule illegality, whereof he was ignorant. But now thus overlate, would break out to an unprofitable vexation,
since

since this crime which might justly have hindred the marriage from being contracted, ought not to have the force, after so long intermission and successe of an intervenient wedlock, to dissolve it. The time was, when the Minister in a solemne preconization, called you either *then to speake*, or *for ever after to hold your peace*: had you then spoken it might have been construed as zeale, now, not to hold your peace, will bee interpreted no better then malice.

AN





AN
ADVERTISEMENT
TO THE
READER.

I Have beene earnestly
moved by some judicious
friends, to goe on with this
subject, and to mak up a
compleat body of case-Divi-
nity, both practicall, specula-
tive, and mixt; whereof I
confesse there is great defect
in

in our language ; But I remember the talke which Plutarch reports to have been betwixt Crassus, and King Deiotarus, two old men, but great undertakers. Crassus jeeres Deiotarus for laying the foundation of a new City in his decayed age ; Deiotarus twits Crassus for going about, in the like age to subdue the warlike Parthians ; both justly supposing our decrepit age a just dissuasive from

* Plut. in vita Crassi

ven-

venturing upon great enter-
prises; Although herein I
should not want a worthy
precedent, that honour of
Navarre, Martinus Az-
pilcueta, who at ninty years
finished the fourth Edition
of that his elaborate Manu-
all of Cases of Conscience.
But as for me, I am suffici-
ently conscious of my owne
inabilities for so long, and
difficult a worke; Onely
this, I shall willingly profess,
that such scruples as I meete
with in my way, I shall not
allow

allow my selfe to balke, and
shall leave the answers upon
the file. In the meane time,
let me incite some of our ma-
ny eminent Divines, whose
wits are fresh, and bodies
vigorous, to go through with
so usefull a worke; Many
yeares are passed since my
ancient and learned Col-
league Dr. Ralph Cud-
worth told me that hee had
with much labour finished
that taske, and devoted it to
the presse, which yet sleeps in
some private hands. It were
happy

*happy if his worthy Sonne,
the just heyre of his Fathers
great abilities, would make
strict inquiry after it, and
procure it to the publique
light, for the common bene-
fit of Gods Church both in
the present, and succeeding
ages.*

The End.
